

COMMITTEE CONFERENCE - PMPD COMMENTS  
BEFORE THE  
CALIFORNIA ENERGY RESOURCES CONSERVATION  
AND DEVELOPMENT COMMISSION

In the Matter of:	)	
	)	
Duke Energy for the	)	Docket No.
Morro Bay Power Plant Project	)	00-AFC-12
_____	)	

VETERANS MEMORIAL  
209 SURF STREET  
MORRO BAY, CALIFORNIA 93442

MONDAY, JUNE 30, 2003

1:02 p.m.

Reported by:  
James A. Ramos  
Contract No. 170-01-001

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMITTEE MEMBERS PRESENT

William Keese, Presiding Member

James D. Boyd, Associate Member

HEARING OFFICER AND ADVISORS PRESENT

Gary Fay, Hearing Officer

Rick Buckingham, Advisor

Michael Smith, Advisor

STAFF AND CONSULTANTS PRESENT

Caryn Holmes, Staff Counsel

Kevin Kennedy, Project Manager

Jack Caswell, Project Manager

PUBLIC ADVISER

Roberta Mendonca

APPLICANT

Christopher T. Ellison, Attorney  
Ellison, Schneider and Harris

Kelly O'Brien  
Duke Energy North America

INTERVENORS

Robert Schultz, City Attorney  
Steven J. Elie, Attorney  
Musick, Peeler, Garrett, LLP  
City of Morro Bay

Patti Dunton, Native American Consultant  
Salinan Tribe of Monterey and San Luis Obispo  
County

INTERVENORS

Henriette Groot, President  
Babak Naficy, Staff Attorney  
Environmental Defense Center  
Coastal Alliance on Plant Expansion

Bill Powers  
Peter Wagner  
Sierra Club, Santa Lucia Chapter  
Tom Laurie  
Coastal Alliance on Plant Expansion

ALSO PRESENT

Deborah Johnston, Environmental Scientist  
California Department of Fish and Game

Michael Thomas  
Central Coast Regional Water Quality Control Board

Gary E. Willey, Engineer  
San Luis Obispo County Air Pollution Control  
District

Janice Peters, Vice Mayor  
City of Morro Bay

Albert Huang

John Stahl  
Lompoc Wind Power Project

Pamela Soderbeck

Jack McCurdy

Linda Merrill

Rodger Anderson

Colby Crotzer

Stan House

Mandy Davis

Jim Wood

ALSO PRESENT

Pamela Heatherington

Melody DeMeritt

Garry Johnson

Joan Carter

Eric Johnson

Martha Winston

Carrie Filler

John Smurda

Norman Risch

James Pauly

Tom Hutchings

Barbara Jo Osborne

David Nelson

Monique Nelson

Grant Crawl

Bill Woodson

Pete Wagner

Richard Smith

John Barta

Kim Kimball

Betty Winholtz

Peter Risley

Dannie Tope

Ken Vesterfelt

ALSO PRESENT

Don Boatman

Roger Ewing

Richard Keller

Evan Buddenhager

Nelson Sullivan

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

## I N D E X

	Page
Proceedings	1
Opening Remarks	1
Presiding Member Keese	8
Overview	1
Introductions	3
CAPE Motion to Reopen Record	5
City of Morro Bay Motion to Reopen Record	6
Exhibits 192, 193	7/7
Parties' Comments	9
Applicant	9
Rebuttal	126
CEC Staff	44
Rebuttal	134
City of Morro Bay	69
Coastal Alliance on Plant Expansion	77
Mr. Naficy, Staff Attorney, Environmental Defense Center	77/94
Mr. Powers	80
Dr. Wagner, Sierra Club	84
Mr. Laurie	92
Salinan Tribe of Monterey and San Luis Obispo County	111
Agency Comments	114
Department of Fish and Game	114
Regional Water Quality Control Board	119

## I N D E X

	Page
Public Comment	136
Evening Session	177
Public Comment - continued	177
Closing Remarks	264
Hearing Officer Fay	264
Commissioner Boyd	265
Adjournment	269
Reporter's Certificate	270

## P R O C E E D I N G S

1:02 p.m.

HEARING OFFICER FAY: This is the Committee Conference of the Committee of the California Energy Commission delegated to hear the Duke Energy's proposal for the Morro Bay Power Plant modification.

This Committee Conference was announced by public notice of May 22nd of this year. And I will just go over a few general things as preliminary matters.

This is not an evidentiary hearing. This is a hearing to take comments by the parties and comments from the public. Pursuant to our regulations there was a 30-day minimum, and in this case a 45-day period in which to submit written comments on the Presiding Member's Proposed Decision.

In addition to that, and not required by law, the Commission has traditionally held this event in a power plant case as a convenience to the local people. So we've come down to give those folks who have chosen not to submit written comments, to come in and make comments about the proposed decision. And the whole focus today is



1 on the language contained in the proposed  
2 decision.

3 The restrooms are in the hallway behind  
4 you. And what we intend to do today is follow the  
5 agenda that you can find on the back table. After  
6 introductions we'll go through comments by the  
7 parties. And then when those comments are  
8 completed we will move into public comment.

9 If that begins this afternoon we'll do  
10 so until about 5:00. In any case, we will return  
11 at 7:00 p.m. and hopefully we'll be done with the  
12 parties by that time and can take comments from  
13 the public.

14 We are going to ask the parties to limit  
15 their total time to 45 minutes for each party.  
16 And Jack Caswell, our Project Manager, is going to  
17 help me keep time. Any of the parties that wish  
18 can reserve a time for rebuttal at the end. They  
19 should let us know before they begin speaking of  
20 their intentions.

21 And I do want to apologize to Patti  
22 Dunton. She was inadvertently left off the  
23 agenda. That's my fault. And, Patti, we will be  
24 sure to call on you right after CAPE makes its  
25 comments.

1           At this time I'd like to take  
2           appearances from the parties, so we'll begin with  
3           the applicant, Mr. Ellison.

4           MR. ELLISON: Thank you. Christopher  
5           Ellison, Ellison, Schneider and Harris for the  
6           applicant, Duke Energy Morro Bay, LLC.

7           MS. O'BRIEN: Kelly O'Brien, Duke Energy  
8           North America, out of Houston.

9           MR. ELIE: Steven Elie, Musick, Peeler  
10          and Garrett, Special Counsel to the City of Morro  
11          Bay.

12          MR. SCHULTZ: Rob Schultz, City Attorney  
13          for the City of Morro Bay.

14          MS. HOLMES: Caryn Holmes, Staff  
15          Counsel.

16          MR. KENNEDY: Kevin Kennedy for Energy  
17          Commission Staff.

18          MR. NAFICY: Babak Naficy, on behalf of  
19          the Intervenor Coastal Alliance on Plant  
20          Expansion.

21          DR. GROOT: Henriette Groot, President  
22          of Coastal Alliance on Plant Expansion. And to my  
23          right, Dr. Peter Wagner, who will also be speaking  
24          for us today.

25          HEARING OFFICER FAY: And Patti Dunton

1 is here, as well. Any other parties represented?

2 All right. And we also have Deborah Johnston from  
3 the Department of Fish and Game. And any other  
4 agencies represented here? Yes.

5 MR. THOMAS: Mike Thomas, Regional Water  
6 Board.

7 HEARING OFFICER FAY: Michael Thomas,  
8 Regional Water Board. Good. Yes?

9 MR. WILLEY: Gary Willey with the Air  
10 District.

11 HEARING OFFICER FAY: Gary Willey from  
12 the local Air District. Any others? Thank you.

13 What I want to encourage the parties  
14 today is to not repeat their written comments.  
15 That's not necessary. We are taking the written  
16 comments very seriously and are studying them. So  
17 for the sake of saving time you need not go over  
18 all those.

19 We will give parties an opportunity to  
20 supplement, for instance, if they have hyper-  
21 technical comments that they feel don't lend  
22 themselves to oral comment because of punctuation  
23 or some details that are better done in writing,  
24 we will give leave to submit that type of thing.  
25 In addition, you may react to any comments heard

1 for the first time today in a subsequent filing.

2 We're not offering yet another round of  
3 argument. But for things that either are not  
4 stated orally or you feel you must react to  
5 another party's oral statements made here today  
6 for the first time, you will have leave to file  
7 that.

8 In addition, we have a petition filed by  
9 CAPE to reopen the record. CAPE basically has  
10 argued that the Phillips Williams report raises a  
11 discrepancy of the size of the Morro Bay estuary  
12 as assumed by TetraTech versus the assumptions of  
13 Phillips Williams. And because that, in their  
14 view, could affect the outcome of some of the  
15 fundamental determinations of the case, they asked  
16 that the Commission reopen the record to take  
17 evidence on that.

18 And so what we would like to do is give  
19 the parties two weeks to file a response to CAPE's  
20 motion. And therefore the response would be due  
21 July 14th. And that is also the time that you  
22 should file any followup to this conference, based  
23 on what I've just described.

24 Following that time the Committee may  
25 issue an order regarding its ruling on the

1 petition to reopen by CAPE. Or choose to set oral  
2 argument on the petition. The Committee has not  
3 decided at this point.

4 Any questions so far about the  
5 preliminary matters?

6 MR. NAFICY: With regard to CAPE's  
7 petition to reopen and especially in light of the  
8 fact that it was filed some time ago and the  
9 parties have had some chance to review it and at  
10 least contemplate their response, is there any way  
11 that there could be a brief period granted to CAPE  
12 to file any response to any replies to anything  
13 that any party may present on that issue?

14 HEARING OFFICER FAY: You mean a  
15 subsequent response after the --

16 MR. NAFICY: Just a reply to any  
17 opposition that may be filed.

18 HEARING OFFICER FAY: Let's hold off  
19 ruling on that and I'll talk to the Committee  
20 about that. I don't think time is a problem. I'd  
21 just like to chat with the Committee about that  
22 before we rule on it. And so we'll get back to  
23 you on that.

24 In addition, the City of Morro Bay made  
25 a very discrete motion for reopening the record to

1 receive two pieces of evidence that were  
2 identified as exhibits 192 and 193.

3 Exhibit 192 is actually a City of Morro  
4 Bay resolution number 72-01 that was adopted by  
5 the City of Morro Bay. And exhibit 193 contains  
6 the minutes of a city council meeting dated  
7 November 13, 2001.

8 These were inadvertently not moved into  
9 evidence or ruled on, but they are both public  
10 documents. And I assume there will be no  
11 objection in receiving them at this time. Do I  
12 hear any objection?

13 All right, hearing none, those are  
14 received into evidence. And they were fully  
15 discussed during the hearing on the assumption  
16 that they were evidence.

17 All right, just a reminder. We ask that  
18 the parties keep their remarks specific to the  
19 PMPD. There are other opportunities ahead for  
20 general comment on the application, as a whole,  
21 and all the issues related to it in front of the  
22 full Commission. But today we're just inviting  
23 comments on the proposed decision.

24 So if there's no other questions about  
25 the way we're going to proceed, I'll turn it over

1 to Chairman Keese.

2 PRESIDING MEMBER KEESE: I'd like to  
3 welcome you all here. We were sort of waiting,  
4 hoping that Commissioner Boyd and Mike Smith would  
5 be here for the start of this. I don't know if  
6 anybody else drove over 41 today, but there's a  
7 30- to 40-minute delay while they clear some rocks  
8 that have slid into the roadway evidently.

9 I just got a call from Commissioner  
10 Boyd; he's about 20 minutes away, but he will be  
11 joining us.

12 I'd also like to welcome those of you  
13 who have been here before. On my left is Rick  
14 Buckingham, who is now serving as my Advisor and  
15 participating on this case.

16 I'll re-emphasize what Mr. Fay  
17 indicated, which is that Commissioner Boyd,  
18 myself, and two Advisors have each read all of the  
19 documents that have been submitted in this stage  
20 of the filings, and are reasonably familiar with  
21 the issues that have been raised. We'd ask that  
22 you not repeat what's in those, but focus on what  
23 other parties have submitted so that we can  
24 expedite this matter.

25 Thank you for coming, again. Mr. Fay.

1                   HEARING OFFICER FAY: Thank you, Mr.  
2           Chairman. And now we'll move to comments by the  
3           applicant. Mr. Ellison.

4                   MR. ELLISON: Thank you, Chairman Keese,  
5           Mr. Fay, Mr. Buckingham. I was under the mis-  
6           impression that we were going to have somewhat  
7           more time than the 35 minutes that has been  
8           discussed, or the 45 minutes. I'd like to reserve  
9           ten for rebuttal. I will try to stay within the  
10          35 minutes by cutting down the presentation as we  
11          go. But it may be a little less organized than I  
12          would like.

13                  By way of overview I have just a couple  
14          of introductory comments. I'm going to skip the  
15          summary of Duke's comments on the PMPD, other than  
16          one or two things, relying upon your statements  
17          that you don't want to hear that repeated and that  
18          you've already read that. And I'm going to spend  
19          most of my time talking about Duke's response to  
20          the comments that we've seen from other parties.

21                  By way of introductory comments I just  
22          want to reemphasize what Hearing Officer Fay said,  
23          that we certainly concur that this is not an  
24          evidentiary hearing.

25                  And one of the concerns we have about



1 other parties' comments is that in some cases  
2 there is an attempt to introduce new evidence by  
3 way of comments in this proceeding. And we are of  
4 the understanding that that's inappropriate.

5 We trust the Committee will ignore any  
6 statements of facts that are not linked to the  
7 record that's already been compiled. And I'll be  
8 discussing that in particular in a couple of cases  
9 as I go forward.

10 With respect to Duke's comments on the  
11 PMPD, let me say just two things. First, Duke  
12 very much supports the PMPD. We certainly didn't  
13 get everything that we wanted in the PMPD. We won  
14 some issues, we lost some issues, like all the  
15 parties did.

16 But we compliment the Committee for its  
17 fair and thoughtful resolution of some very  
18 difficult technical issues. It is very apparent  
19 to us that the Committee, the Hearing Officer and  
20 all of you that are involved in the preparation of  
21 the PMPD took your work very seriously, and that  
22 you dug deep into this very voluminous record.  
23 And I cannot say strongly enough how much Duke  
24 appreciates that.

25 Secondly, let me just say that with

1       respect to the marine mammal center that is  
2       proposed in the PMPD, that was not raised in the  
3       proceeding, and in our view there is no  
4       substantial evidence in the record to support it.

5               Nonetheless, Duke is prepared to agree  
6       to that condition, and make land available on the  
7       site in accordance with the terms of that  
8       condition for a marine mammal center.

9               With that, let me turn to the comments  
10       of other parties, and let me begin with comments  
11       submitted by the California Coastal Commission.

12              First, a couple of process issues. I  
13       want to remind the Committee that it's Duke's  
14       position that the Coastal Commission report is  
15       actually not applicable to an AFC proceeding, in  
16       the absence of a notion of intention. We've made  
17       that position clear to you in writing previously.  
18       We reiterate it now.

19              Secondly, even if applicable, the  
20       statute that calls for that report in the Warren  
21       Alquist Act calls for it to be filed prior to  
22       hearings on the notice.

23              So even in an AFC proceeding we think  
24       this report should have been filed prior to the  
25       hearings, which would have enabled, avoided a

1       rather serious problem that we have now that the  
2       Committee is grappling with in the PMPD. But, in  
3       some cases, the Coastal Commission has recommended  
4       positions for which there is no substantial  
5       evidence in the record.

6               With regard to substantive issues, the  
7       Coastal Commission, and to some extent the Energy  
8       Commission Staff, and CAPE argue that the  
9       Committee did not make the findings under 25523(b)  
10      with respect to marine impacts and alternative  
11      cooling.

12             We're somewhat baffled by that remark  
13      because we find in the PMPD very clear findings  
14      with respect to both the feasibility of  
15      alternative cooling, and with respect to its  
16      relative environmental merits compared to habitat  
17      enhancement. Specifically PMPD finding of fact  
18      number 24 on page 325 states very clearly, and I  
19      quote:

20             "We find that this alternative" meaning  
21             closed cycle cooling "is not feasible for  
22             this project at this site."

23             And with respect to the relative merits  
24      environmentally of alternative cooling at both  
25      pages 4 and page 344 of the PMPD the Committee

1 finds that even if dry cooling were feasible and  
2 cost free, it would not offer the environmental  
3 benefits to the Morro Bay estuary that a  
4 successful habitat enhancement program would  
5 provide.

6 Those are exactly the findings called  
7 for in 25523(b), and so we're somewhat mystified  
8 about the claim that the Committee did not make  
9 the required findings.

10 However, given the comments that have  
11 been made, and perhaps this was the Energy  
12 Commission Staff's point, perhaps we're in  
13 agreement on this, we would agree with the staff  
14 if this was their point, that the Committee should  
15 make those findings with specific reference to  
16 25523(b) and the Coastal Commission report.

17 And we will be submitting some technical  
18 comments to you, along with other comments, on the  
19 Coastal Commission letter suggesting what we think  
20 the appropriate language would be.

21 With respect to terrestrial biology the  
22 Coastal Commission makes some comments regarding,  
23 among other things, impacts to the snowy plover.  
24 We are aware of a letter to you, Mr. Fay, from the  
25 U.S. Fish and Wildlife Service suggesting that in

1 their biological opinion that they are changing  
2 their position from the earlier position. And had  
3 concluded that there are no impacts to the snowy  
4 plover.

5 The PMPD already suggests that it may  
6 need to be amended when the biological opinion is  
7 finalized. And we understand that that's what the  
8 Committee will do when that opinion is finalized.  
9 I think that's what the U.S. Fish and Wildlife  
10 Service is asking for.

11 HEARING OFFICER FAY: Excuse me, Mr.  
12 Ellison. Your impression is that they are sending  
13 this letter? I don't believe I've received it  
14 yet.

15 MR. ELLISON: I have a copy of it, and I  
16 believe it was dated mid last week.

17 The Coastal Commission also speaks to  
18 the geotechnical report and the potential for  
19 frack-outs from boring under Morro Creek. On this  
20 issue, to resolve the issue Duke would be willing  
21 to accept an expanded permit condition to provide  
22 to the CPM an additional boring result more  
23 approximate to the crossing location to address  
24 the Coastal Commission Staff's concern.

25 And lastly, the Coastal Commission

1 expresses some dismay that the -- the Coastal  
2 Commission Staff, I should say, expresses some  
3 dismay that the Committee did not adopt its  
4 recommendations for conditions Bio-T-4 through  
5 Bio-T-17.

6 Again, we're a little bit mystified by  
7 this comment for a couple of reasons. First of  
8 all, our review of the Coastal Commission report  
9 suggests that the Coastal Commission only made  
10 recommendations for a few, not all 15 of the  
11 conditions identified in these comments.  
12 Specifically Bio-T-4, T-5, T-14, T-15 and T-16.

13 Secondly, as we review the changes that  
14 the Committee made to those five conditions, we  
15 find that with respect to Bio-T-4 it appears that  
16 the Committee adopted exactly the language in the  
17 Coastal Commission report. With respect to T-5 it  
18 adopted essentially identical language, except  
19 that it added Morro Bay to the review loop.

20 With respect to Bio-T-14 the dollar  
21 amount is different, but otherwise it's the same.  
22 With respect to T-15 the only difference is the  
23 ten-year limitation on fencing for the snowy  
24 plover in the instance where the snowy plover does  
25 not nest. And lastly with respect to T-17, we

1 find it substantive the same as what the Coastal  
2 Commission recommended.

3 So notwithstanding the comments of the  
4 Coastal Commission about findings and ignoring its  
5 recommendations, we think that the Committee, in  
6 fact, followed the recommendations of the Coastal  
7 Commission very closely.

8 With respect to the staff comments,  
9 again let me move rather quickly. Carbohydrazide,  
10 first of all, pages 2-3 of the staff comments,  
11 there appears to be some new evidence that the  
12 staff is seeking to introduce relative to  
13 transportation impacts from carbohydrazide. We  
14 object to the introduction of new evidence and  
15 comments.

16 Secondly, we remind the Committee that  
17 the Fire Chief of Morro Bay testified in this  
18 proceeding that he supports the continued use of  
19 aqueous hydrazine. Aqueous hydrazine has been  
20 used at this site already; it's been used for a  
21 long time. The Fire Department's familiar with  
22 it. And ironically, the Fire Chief testified that  
23 he wanted to see the continued use of aqueous  
24 hydrazine, not only because they're familiar with  
25 it, but also because of concerns about

1 transportation of carbohydrazine. And you'll find  
2 that in the January 29th transcript, at 154.

3 With respect to aquatic biology, the  
4 staff again raised certain CEQA issues. Let me  
5 take a moment to comment on a couple of them.  
6 They again raised the concern about short-term  
7 impacts and seasonality of impacts.

8 First, again, let me raise a new process  
9 issue. At page 6 of the staff's testimony there  
10 is quite clearly new testimony on this issue with  
11 respect to interpretations and manipulations of  
12 data from exhibit 187.

13 And let me say that to the extent the  
14 staff might say that these are simply mathematics  
15 applied to exhibit 187, again we've had this  
16 issue. The issue came up in hearings, it's coming  
17 up again here. There's not only the issue of  
18 seeing this testimony to see that it was done  
19 correctly; but there's also the issue of parties'  
20 opportunity to submit evidence in response.

21 And I want to make very clear to you  
22 that had this been included in the FSA, or had  
23 this been included even in staff's rebuttal  
24 testimony Duke would have presented evidence. And  
25 I make an offer of proof to present evidence now



1 if you're going to rely upon this. We would, as a  
2 matter of due process, ask that you reopen the  
3 proceeding however, we do not want that.

4 But as a matter of due process, if  
5 you're going to rely on this new evidence we would  
6 make an offer of proof to submit evidence saying  
7 essentially three things. First of all, that the  
8 existing plant has operated at its full capacity  
9 during the five-year life.

10 Secondly, that during the five-year  
11 baseline that the Committee adopted there were  
12 significant forced outages of many months duration  
13 for the existing plant which accounts in part for  
14 its low water use, very little water use in  
15 certain years, particularly 1996.

16 And thirdly, that in three of those five  
17 years at the baseline the plant was operated by  
18 PG&E. And PG&E was subject to contractual  
19 requirements related to the south of Tesla  
20 agreements in transmission in the Central Valley.  
21 Which caused PG&E to curtail operations at Morro  
22 Bay in a way which is no longer true with respect  
23 to Duke's ownership.

24 All of those things together  
25 collectively make the five-year baseline, which is

1 appropriate for examining long-term issues,  
2 inappropriate for examining short-term issues.  
3 Having made that comment about due process and  
4 offer of proof, however let me say we don't think  
5 there's a need to reopen these proceedings,  
6 because the staff is demonstrably wrong on this  
7 issue, based upon the record that already exists.

8 Let me make a couple of comments. Staff  
9 suggests there's absolutely no evidence in the  
10 record that the maximum capacity has ever been  
11 achieved. Well, the reason there isn't is because  
12 staff has raised this issue so late. They've  
13 never asked for that information, and it could  
14 certainly have been provided.

15 Secondly, what do we know about short-  
16 term impacts based upon what's already in the  
17 record. Well, first and foremost, we know, based  
18 upon the permit limitation of 370, that the annual  
19 water use will be lower than any of the historic  
20 baselines.

21 Secondly, we know that the modernization  
22 includes four separately operable pumps for each  
23 unit. So that the new project will have more  
24 flexibility than the existing project to reduce  
25 water use at a given power output.

1           Third, we know that spawning events are  
2 random and vary among species. There's no  
3 predictability to them. All the parties agree on  
4 that.

5           Fourth, the staff admitted that the  
6 existing plant might be operating at its full 668  
7 mgd capacity during a short-term spawning event.  
8 That's June 6th transcript at 270-271.

9           And lastly and most importantly, the  
10 staff's monthly analysis is meaningless without  
11 any showing that there's some correlation between  
12 the timing of the short-term spawning events and  
13 the timing of their speculative examples of when  
14 they think the new plant would be withdrawing more  
15 water than the old plant.

16           There's no basis for changing the  
17 conclusion that over time the new plant will be  
18 withdrawing less water, even though at a  
19 particular moment if you select that moment, it  
20 might be withdrawing more.

21           And that's the most important point  
22 here. It's this: CEQA requires that there be a  
23 significant adverse impact. So even if you accept  
24 everything that the staff says is true, the fact  
25 that there is a temporary and ultimately offset

1       increase in entrainment does not change the fact  
2       that based upon everything we know, entrainment,  
3       in fact, will be lower with the new plant than it  
4       is with the old plant. And a temporary and offset  
5       impact is not a significantly environmental impact  
6       under CEQA.

7               And there's absolutely no evidence in  
8       this record, and nobody's even attempted to claim  
9       otherwise. Nobody has attempted to make a case as  
10      to why these alleged short-term impacts have any  
11      scientific or legal significance whatsoever.

12             Moving on to the cumulative impacts  
13      issue.

14             HEARING OFFICER FAY: Excuse me, let me  
15      ask a few questions about short-term water use  
16      while you're on that.

17             First of all, how do you respond to  
18      staff's argument about the Save our Peninsula  
19      Committee versus the Monterey County Board case  
20      that they argue supports their position that  
21      historical use over the five years should be  
22      compared to future use of the new plant?

23             MR. ELLISON: Well, the argument in that  
24      case is that you look at the, quote, "actual, on-  
25      the-ground, existing environment." And the

1 actual, on-the-ground existing environment we have  
2 out there now is a plant that has the capability,  
3 and in fact has, operated at 668 mgd for short  
4 periods of time. That's the on-the-ground real  
5 environment.

6 We do not have a situation as existing  
7 in that case of where there's some legal, but not  
8 physical, operating characteristics. So I think  
9 the case is distinguishable on that basis.

10 HEARING OFFICER FAY: One of the  
11 problems, I think, in staff's argument is that  
12 we're dealing with monthlies, which mask the  
13 maximum capacity that you're talking about and the  
14 historic record.

15 If we had dailies and could identify the  
16 days on which the plant operated at its maximum,  
17 would that case support relying on that as a  
18 comparison to how the new plant should operate?

19 MR. ELLISON: Well, again, because this  
20 issue has come in the way that it has, I don't  
21 know that that information's in the record. I  
22 would again make the offer of proof to show that  
23 the existing plant has operated at its maximum  
24 capacity for many many hours during that five-year  
25 baseline period.

1           But I think the real issue that you've  
2 got here is more easily disposed of than that.  
3 Because what the staff is essentially saying is  
4 let's look at the short term; let's pick  
5 arbitrarily, sort of as the PMPD puts it, a  
6 speculative worst case moment and ignore the  
7 offset that occurs to those impacts the rest of  
8 the year. And call that a significant impact.

9           It's the kind of reasoning that keeps  
10 casinos in business basically. It's the gambler  
11 that goes to a slot machine and says, calls  
12 themselves a winner because for two of the three  
13 hours they were ahead, even though at the end of  
14 the day they lost all their money.

15           Unless you can show that there's a  
16 pattern which nobody has even alleged here, such  
17 that you can say that the long-term reduced use of  
18 water and the long-term reduced entrainment does  
19 not ultimately offset any intermediate  
20 discrepancies, there's no basis for finding a  
21 significant impact.

22           You can't call an impact significant  
23 that is temporary and ultimately offset. It's  
24 just not significant. And nobody's tried to make  
25 the case that it is.

1 Does that answer your question?

2 HEARING OFFICER FAY: Well, yes, it  
3 does. Although they also make reference to an  
4 approach in the El Segundo case, with which I'm  
5 not intimately familiar, and I just wondered if  
6 you had a response to that. Is there some way to  
7 distinguish the approach taken in that case?  
8 Because I believe that case did have some kind of  
9 seasonal caps that were based on spawning  
10 information.

11 MR. ELLISON: Well, again, we object to  
12 that information because it is extra-record, new  
13 information. There's no citation to the record  
14 for that kind of stuff.

15 But having said that, again the argument  
16 in this case, I can't speak to El Segundo, but in  
17 this case because the permit limitations and the  
18 lack of any randomness, especially when you look  
19 at all the different species of these spawning  
20 events, you can't find any correlation between the  
21 times of these so-called seasonal events and the  
22 times at which the existing plant allegedly could  
23 operate more than the new one.

24 And so without that kind of correlation  
25 you have to assume that over time these impacts

1 are offset. There's no basis for making any other  
2 conclusion.

3 And, in fact, if you look at the 316B  
4 studies you'll see the larval density tables in  
5 there, and you'll see that there's not a season to  
6 spawning for these species. It jumps around quite  
7 randomly across the entire year. And there's no  
8 particularly good or bad time to be generating at  
9 this site.

10 Now, at El Segundo, I don't know. It  
11 may be different. If there were a particular  
12 species or a particular time that had been  
13 identified in the record as being especially  
14 sensitive or something, that might be different.  
15 But that's not what we have here.

16 HEARING OFFICER FAY: Okay, and I'm  
17 sorry to interrupt your presentation, but jumping  
18 back to the snowy plover. Do you anticipate that  
19 the letter from U.S. Fish and Wildlife develops  
20 the concerns expressed by staff in their comments  
21 about the snowy plover?

22 MR. ELLISON: The letter that I have  
23 seen simply says that the staff of U.S. Fish and  
24 Wildlife Service and, I believe, EPA have, at this  
25 point, determined that there are no impacts or



1       likely to be impacts on the snowy plover.

2               It does say the EPA is continuing to  
3       review the issue, so there's a bit of an  
4       ambiguity, in my view, in the letter. And that's  
5       really all it says.

6               If you ask the Committee to incorporate  
7       the findings of the ultimately biological opinion,  
8       which is what the PMPD suggests it will do, given  
9       the schedule that we have in this case, and what I  
10      understand of the Fish and Wildlife schedule, I  
11      don't see any reason the Committee can't do that.

12              HEARING OFFICER FAY: So the implication  
13      is there would be no basis for a financial  
14      requirement for fencing?

15              MR. ELLISON: That's the implication,  
16      yes.

17              HEARING OFFICER FAY: Okay.

18              MR. ELLISON: Let me move on, if I may,  
19      to the staff's discussion of cumulative impacts  
20      issue.

21              If you look at the CEQA guidelines cited  
22      by the staff at page 8 of their testimony and  
23      their footnote, staff highlights the fact that the  
24      word "past" appears in the CEQA guideline. But  
25      they ignore the remaining words in the guideline.

1           The point here is in order to have a  
2       cumulative impact you have to have an impact first  
3       of the project you're looking at, this project,  
4       the Morro Bay project. Now, it doesn't have to be  
5       a significant impact, but it has to be an adverse  
6       impact.

7           Secondly, you have to accumulate that  
8       against other projects. And, in fact, that same  
9       guideline, if you have it in front of you, says  
10      closely related projects.

11          The point that we have made repeatedly  
12      is that sedimentation in the estuary is not a  
13      closely related other project to the power plant.  
14      In fact, it's not a project at all. It's part of  
15      the existing environment.

16          But most fundamentally the issue here is  
17      this. The Committee has found, and we certainly  
18      believe correctly, that this power plant has no  
19      impact under CEQA relative to entrainment. In  
20      fact, it's reducing the impacts of entrainment.  
21      Therefore there's nothing, there is no impact, not  
22      even an insignificant one, to accumulate against  
23      any other project, any other impact elsewhere.

24          And I have brought with me today  
25      excerpts from a treatise on CEQA that I would be

1 happy to pass out to the parties and to the  
2 Committee. We'll do that at the break; you can  
3 read it for yourself. But it makes very clear  
4 that in order to have a cumulative impact you have  
5 to first have an impact of the project, itself.  
6 It does not have to be significant. But it has to  
7 be adverse in order to accumulate against  
8 something else.

9 The whole point of cumulative impacts is  
10 to address the situation where you have negative  
11 impacts that are not significant individually, but  
12 could be significant collectively. Where you  
13 don't have an impact at all that cannot be the  
14 case.

15 HEARING OFFICER FAY: So in the case  
16 where, if I recall correctly, the thermal impact  
17 is determined in the proposed decision is about  
18 the same. And that the impingement is reduced  
19 with the new project versus the existing project.  
20 And the entrainment impact is reduced. Then you  
21 would say there is no impacts to put into the  
22 cumulative impact analysis?

23 MR. ELLISON: That's right, precisely.  
24 And if you look at the CEQA guidelines,  
25 specifically sections 15130(a), (a)(3), and

1 (a) (4), you'll see quite clearly in there, and  
2 again I'll be happy to pass out the treatise that  
3 I brought with me that makes very clear that you  
4 have to have both things. You have to have  
5 projects, other projects closely related that have  
6 an impact, and you have to have the same impact,  
7 albeit perhaps not significant from this project,  
8 to accumulate with.

9 We just don't have that in this case, so  
10 there's no cumulative impact with respect to  
11 entrainment or once-through cooling.

12 In the interest of time I'm going to  
13 skip over a couple of other comments. Let me just  
14 say the staff suggests that the Committee's PM  
15 finding is superfluous because of it's finding  
16 that there's no CEQA impact and suggests it be  
17 deleted.

18 We do not think it's superfluous. It's  
19 very important to the finding regarding nexus and  
20 the approval of the habitat enhancement program  
21 under the Clean Water Act. And therefore, we  
22 think that the Committee should keep it. It is  
23 not just -- the proportional mortality issue is  
24 not simply related only to CEQA; it's related to  
25 the Clean Water Act; it's related to the Porter-

1 Cologne Act. It's related to anything that has to  
2 do with the impacts of once-through cooling.

3 Staff suggests the Committee should  
4 defer to the Coastal Commission regarding the  
5 issue of whether the alternative cooling be  
6 coastal dependent. We again remind the Committee  
7 that the City of Morro Bay has to make a change  
8 for that requirement in its zoning. It's not just  
9 a local coastal plan, Coastal Commission issue.  
10 There's a zoning issue here. Morro Bay would be  
11 the arbiter of that. Morro Bay's made it very  
12 clear that they don't share the Coastal  
13 Commission's views about what is and is not  
14 coastal dependent.

15 The project objectives issue. This is  
16 the question about whether the staff's proposed  
17 alternative cooling fails to achieve an important  
18 objective of the project.

19 Staff states the Committee apparently  
20 concluded that any alternative that is not sized  
21 to accommodate generation of 1200 megawatts at  
22 temperatures that occur only .04 percent of the  
23 time will fail to meet the project objectives.  
24 That's page 12 of their comments.

25 Staff also says, quote, "Staff urges the

1 Committee not to reject these alternatives as  
2 inconsistent with the project objective simply  
3 because they don't match the applicant's precise  
4 capacity objective."

5 We think that's a gross  
6 mischaracterization of both the evidence and the  
7 PMPD. While the staff continually seeks to focus  
8 exclusively on the impact of its alternative and  
9 exactly 1200 megawatts, the basis of the PMPD  
10 conclusions and Duke's concern, is the impact of  
11 staff's alternative of not .04 percent of the  
12 time, but on average summer days in Morro Bay.

13 And the PMPD correctly finds, based on  
14 the evidence, that staff's alternative would cut  
15 the peaking capacity of the project in half on  
16 average summer day temperatures in Morro Bay. It  
17 would cut it from 200 megawatts to 100 megawatts.  
18 One hundred megawatts is a substantial size power  
19 plant. The Energy Commission licenses power  
20 plants smaller than that many times.

21 That's plainly significant. Staff's  
22 characterization of this of saying that the  
23 Committee has said that you violate a project  
24 objective if you do anything other than precisely  
25 what the applicant asks for is not what the PMPD

1       says.

2               The HEP issues, in the interest of time,  
3       I'm going to skip. A couple of issues, we may put  
4       them in a letter. Let me say with respect to  
5       terrestrial biology issues, the staff makes a  
6       recommendation regarding consulting with the  
7       national estuary program regarding a percentage of  
8       funds that are allocable to administration. We  
9       have no objection to doing that.

10              Staff also makes the point that they  
11       would like to see the project construction  
12       deadline be tied to the initiation of construction  
13       on the new power plant, as opposed to the tank  
14       farm demolition. We do not have a fundamental  
15       problem with that approach, provided it is applied  
16       consistently.

17              And one of the comments that we have  
18       made is that we are concerned that conditions that  
19       are really related to the construction of the  
20       power plant are triggered by the tank farm  
21       demolition. We think it would be appropriate to  
22       do both what the staff is requesting and what Duke  
23       is suggesting. And say that tank farm demolition,  
24       although we disagree with staff about being  
25       jurisdictional, we believe it is jurisdictional.

1           And nonetheless, it's mere site  
2     preparation. It's not the construction of the  
3     power plant. We think what the Committee ought to  
4     do is make that distinction very clear, as we have  
5     suggested and the staff has suggested for both the  
6     purposes that we have described.

7           Okay, CAPE. I'm not going to comment on  
8     the air issues, again, in the interest of time.  
9     CAPE raises a question about the Porter-Cologne  
10    Act. We do recommend that the Committee make an  
11    express finding regarding section 13142(b)(5) of  
12    the Porter-Cologne Act.

13           However, that's an easy finding to make,  
14    given the other findings that the Committee has  
15    made regarding the feasibility of alternatives.  
16    The Committee will also note that this section  
17    applies only if once-through cooling is used. By  
18    its express terms, it does not demand  
19    consideration of, much less adoption of, a non-  
20    ocean cooling alternative. Nonetheless, it does  
21    talk about feasibility and we think it would be  
22    quite easy and appropriate for the Committee to  
23    make a finding regarding that section.

24           The Committee may also wish to  
25    incorporate the findings of the original Water



1       Quality Control Board regarding the Porter-Cologne  
2       Act in its final decision when the Regional Board  
3       acts on those issues.

4               CAPE raises an issue, and it's also  
5       discussed in some other parties' comments,  
6       regarding the proportion of mortality calculation  
7       and the Committee's finding regarding the issue of  
8       duration of vulnerability to entrainment.

9               And CAPE cites and quotes at some length  
10      Dr. Raimondi's so-called reality check calculation  
11      with respect to this issue. I want to remind the  
12      Committee of a couple of things on record  
13      regarding that.

14              First, Dr. Raimondi's calculation was  
15      not a test of whether the mean or the maximum  
16      exposure should be used. It was a test of the  
17      veracity of the maximum exposure. So it's  
18      irrelevant to the issue that you dealt with in the  
19      PMPD about mean versus maximum.

20              As Dr. Cowan testified on this issue in  
21      his rebuttal testimony, the above-alleged, quote,  
22      "best estimate" of 38 percent is a simple maximum.  
23      And again there is no technically defensible  
24      support for using what staff continues to  
25      mischaracterize as the upper end of the range.

1 Exhibit 269 at page 4.

2           Regarding the issue of mean versus  
3 maximum, however, there are two other reality  
4 checks that are much more relevant than Dr.  
5 Raimondi's calculation and support the Committee's  
6 conclusion. And I want to remind the Committee of  
7 what they are.

8           First, the evidence shows that the  
9 average residency time in the Bay is five days,  
10 not 20. That's consistent with the Committee's  
11 finding, and not consistent with the position of  
12 staff and CAPE on this issue.

13           And secondly, the ultimate reality check  
14 is simply this, the evidence shows, and on these  
15 issues are uncontested, that the plant cooling  
16 water use constitutes less than 10 percent of the  
17 tidal prism, in other words, less than 10 percent  
18 essentially of the water in the Bay is used by the  
19 plant.

20           The evidence is also uncontradicted that  
21 the plant withdraws this 10 percent from the point  
22 at which larval concentrations are relatively  
23 lower than they are elsewhere in Morro Bay. So  
24 we're withdrawing 10 percent of the water with a  
25 concentration relatively lower.

1           It is mathematically impossible to be  
2     withdrawing 30 percent of the larvae if those  
3     facts are true. And those facts are  
4     uncontroverted. You cannot withdraw 30 percent of  
5     what's in the estuary when you're withdrawing 10  
6     percent of the water, and the concentration in the  
7     water is relatively low.

8           That is the ultimate reality check for  
9     all of these issues about proportional mortality.  
10    And it demonstrates that Duke's position that  
11    proportional mortality ought to be lower than 10  
12    percent is correct. And it demonstrates that the  
13    Committee is, in fact, being very conservative by  
14    adopting a proportional mortality of 16 percent.

15           Sixteen percent cannot be reconciled  
16    with those numbers that I just gave you. And  
17    those numbers are simple and they are  
18    uncontroverted.

19           Lastly some comments with respect to  
20    Morro Bay. Duke does not agree to Morro Bay's  
21    proposed changes regarding condition of  
22    certification soil and water 10. The Committee's  
23    already considered and rejected this proposal and  
24    the City raises no new arguments in support of it.  
25    Duke may be willing to discuss this issue with the

1 City outside of regulatory requirement  
2 voluntarily, but we do not agree that there's any  
3 regulatory jurisdiction or justification for  
4 requiring it as a condition of certification.

5 We do not object, however, to adding  
6 Morro Bay as a reviewer of various plans as  
7 suggested in the City's comments, provided it's  
8 clear that the review time will not delay the  
9 CPM's ruling on the plan, and that the City's role  
10 is advisory to the CPM.

11 Thank you. I'm going to reserve our  
12 other comments to a subsequent filing. I would  
13 like to have ten minutes for rebuttal. Let me  
14 close by again expressing Duke's support for the  
15 PMPD, and its appreciation for the efforts of the  
16 Committee in preparing it. Thank you.

17 HEARING OFFICER FAY: Mr. Ellison, could  
18 you stay here for a minute. I'm not going to  
19 charge you for this time, but --

20 (Laughter.)

21 HEARING OFFICER FAY: -- I'd like to get  
22 my questions answered.

23 And refresh my memory on soil and water  
24 10. That was regarding?

25 MR. ELLISON: That's the issue of --

1 HEARING OFFICER FAY: The wells?

2 MR. ELLISON: -- the pump test.

3 HEARING OFFICER FAY: Pump test, okay.

4 Thank you.

5 The staff argued on page 13 of its  
6 comments regarding the HEP that most species  
7 harmed by the project would not benefit from the  
8 HEP. Did you have any reaction to that?

9 MR. ELLISON: I do. The technical  
10 working group found that it was reasonable and  
11 appropriate to use the proxy species as the  
12 measure of impacts and characteristics for all  
13 entrained species.

14 And what the staff is attempting to do  
15 here is to use those proxy species when they serve  
16 staff's case and then not use them, and then  
17 speculation about the non proxy species when they  
18 find that supports their case.

19 You can't have it both ways. If the  
20 proxy species are going to be used as a legitimate  
21 proxy, which is what the technical working group  
22 found was reasonable, then they are a proxy for  
23 all the species on all the issue.

24 And when you do that, what you find is  
25 that the Committee's conclusion that the vast

1 majority of the proxy species use and depend upon  
2 the habitat improved by the HEP is true. That is  
3 a characteristic of the proxy species, and is  
4 nothing other than speculation to say that it's  
5 not also true for the non proxy species.

6 HEARING OFFICER FAY: And staff stresses  
7 the importance of nexus between the impacted  
8 species and the mitigation. Does that sort of get  
9 back to your concern about a goby-for-goby  
10 equation in the mitigation? Is that more or less  
11 the same response that you would have?

12 MR. ELLISON: It is. Let me make two  
13 observations. One is, personally I have a very  
14 difficult time reconciling the staff's position  
15 that the project has a cumulative CEQA impact with  
16 impacts such as sedimentation that are addressed  
17 by the HEP, while staff simultaneously argues that  
18 there's no nexus between the project and these  
19 very same impacts when that is used as mitigation.  
20 So that's the first point.

21 Secondly, you know, we've discussed this  
22 at length in the briefs and I won't spend a lot of  
23 time on this, but the nexus requirement is not a  
24 perfect information, goby-for-goby kind of nexus.  
25 It's a rule of reason. And what we have here is

1 very substantial evidence that shows that the  
2 habitat enhancement program will occur in the same  
3 place over the same time and benefit substantially  
4 the same species that are affected by entrainment.  
5 That's a sufficient nexus.

6 HEARING OFFICER FAY: Thank you. And  
7 regarding the TMDL staff argues that because at  
8 some point there would be, I guess, more pressure  
9 on the water board to enforce some provisions  
10 under the TMDL, that they recommend targeting  
11 projects that are least likely to be funded, but  
12 for the Duke project. Does Duke have any problem  
13 with that?

14 MR. ELLISON: I don't think so.  
15 Frankly, we didn't focus on that particular  
16 comment in staff's comments, so if we do have any  
17 concern I would be happy to point them out  
18 afterwards. But as I stand here today I think  
19 that the whole concept of the HEP is to work with  
20 all the affected parties to develop the  
21 appropriate targeting of these funds.

22 And the kind of consideration that you  
23 just described that staff has enunciated, I think,  
24 would be a legitimate consideration in that  
25 discussion.

1                   HEARING OFFICER FAY: And then also  
2           regarding the staff's comments in appendix A,  
3           which are highly detailed ones. I guess the main  
4           one I wanted to ask you about was under  
5           socioeconomics where they made reference to the  
6           adoption of AB-81, and then in response  
7           recommended a lot of adjustments. Did you have a  
8           chance to review that in light of the statutory  
9           change?

10                  MR. ELLISON: I have to a certain level.  
11           What I have not done is attempted to recalculate,  
12           if you can, and I don't know even that you can,  
13           recalculate what the distribution of funds would  
14           be under the new legislation.

15                  As I recall, the staff essentially asked  
16           the Committee to take administrative notice of the  
17           new legislation, and eliminate the description of  
18           exactly how the funds would be allocated.

19                  I think that if staff wants to eliminate  
20           that table, what I would suggest is that the  
21           parties be given an opportunity, at least, in  
22           their filings to suggest language or perhaps even  
23           a table that reflects the new legislation.

24                  HEARING OFFICER FAY: Okay. We'll  
25           direct that; invite the parties to respond in



1 light of the statutory change. Staff has done so  
2 already by -- that is soil and water -- I'm sorry,  
3 socioeconomics condition, I don't have the number  
4 in front of me.

5 But, in addition, how about the City's  
6 request to refer to the project owner instead of  
7 PG&E on some of the, I believe it's waste  
8 management items? Any comment on that?

9 MR. ELLISON: Well, I think the City  
10 made two points there. One was the issue of the  
11 PMPD recognizing a private contract. And the City  
12 alleged there was some inconsistency between the  
13 Committee recognizing Duke's contract with PG&E  
14 versus not recognizing some portions of the draft  
15 agreement to lease.

16 Let me comment first on that issue.  
17 First of all, the draft agreement to lease is  
18 merely a draft, and the contract with PG&E is a  
19 final executed contract. So that's certainly one  
20 basis for the distinction.

21 But secondly, another basis for the  
22 distinction is that the contract with PG&E bears  
23 directly upon issues that are jurisdictional to  
24 the Energy Commission, including the  
25 responsibility for some of the things that we're

1 talking about now.

2 One of the reasons that the Committee  
3 excluded portions of the agreement to lease were  
4 that you felt, and we agreed, that it addressed  
5 issues that are not jurisdictional. And so I  
6 think that's another basis for the distinction.

7 Having said that, I think it's  
8 appropriate for the Committee to keep the findings  
9 that it has now, because they reflect the evidence  
10 that's in the record.

11 HEARING OFFICER FAY: And following up  
12 on that, to the extent that they do reflect  
13 evidence in the record, for instance the reference  
14 to benefits of the project, like the tax minimum  
15 for one, does Duke have any objection to the  
16 City's request to add a socio-2 that would  
17 actually put those in?

18 In other words, not incorporate the  
19 agreement to lease, but include a couple  
20 provisions from that agreement, such as the  
21 minimum tax benefit, and I think it puts some  
22 reference to local purchases, et cetera. That is  
23 assuming it's consistent with the agreement to  
24 lease and consistent with the proposed decision's  
25 discussion of project benefits.

1 MR. ELLISON: I think what I would  
2 prefer to do, if the Committee is willing, is  
3 respond to that in writing.

4 HEARING OFFICER FAY: Sure.

5 MR. ELLISON: I think we need to review  
6 the proposed condition a little more carefully --

7 HEARING OFFICER FAY: Sure, I just have  
8 to say it seems reasonable, you know, if the  
9 proposed decision had relied on it, as the City  
10 alleged, it did not seem reasonable to incorporate  
11 the agreement to lease because of the extra-  
12 jurisdictional matters. But, I would like your  
13 reaction on that. And that can be in writing.

14 MR. ELLISON: Okay, thank you.

15 HEARING OFFICER FAY: Good. Okay,  
16 thanks very much.

17 All right, now, Ms. Holmes, we'll hear  
18 from the staff.

19 MS. HOLMES: Thank you. First of all, I  
20 also commend the Committee for wading through all  
21 of the evidence. It must have been a formidable  
22 task, and you have my sympathy.

23 PRESIDING MEMBER KEESE: Is that -- is  
24 there a microphone on, which mine wasn't.

25 MS. HOLMES: I believe it is.

1 (Pause.)

2 MS. HOLMES: Is that better?

3 PRESIDING MEMBER KEESE: I think it is.

4 MS. HOLMES: I'll repeat the compliment.

5 I commend you for wading through all of the  
6 evidence and you have our sympathy.

7 I'm going to try to keep my comments  
8 fairly brief and I'm changing the order a little  
9 bit in order to follow some of the discussions  
10 that we've already held. I'll try to keep it as  
11 organized as I can.

12 HEARING OFFICER FAY: Did you want to  
13 reserve any time?

14 MS. HOLMES: I believe I will be able  
15 to. I don't believe that what I'm going to say is  
16 going to take 45 minutes.

17 HEARING OFFICER FAY: All right.

18 MS. HOLMES: Thank you. With respect to  
19 the Committee's ruling about filing written  
20 comments, staff had made a similar informal  
21 proposal to the other parties prior to this PMPD  
22 hearing. There are a number of changes that have  
23 been proposed to the conditions of certification  
24 and some other issues that came up in the comments  
25 that we think are better dealt with in writing.

1           So I don't think I will go into those in  
2           any detail with one exception, and that has to do  
3           with the applicant's proposal with respect to the  
4           tank farm demolition.

5           Staff supports the applicant's efforts  
6           to complete the tank farm demolition and we have  
7           no objection to their doing so, with the two  
8           caveats that we have mentioned in our comments.

9           The first being that it is not deemed to  
10          be construction pursuant to section 1720.3 of the  
11          Commission's siting regulations. The second  
12          caveat is that we believe that necessary  
13          conditions of certification need to be implemented  
14          at the time that those activities occur.

15          We're a little uncomfortable with the  
16          applicant's proposal that was presented in their  
17          comments for how to deal with that. It seemed  
18          more casual than we would like. Our preference is  
19          to include in our comments, and have all the other  
20          parties include in their comments, recommendations  
21          for the specific conditions of certification that  
22          would apply.

23          I would note that when I polled the  
24          technical staff on this issue I found that there  
25          are a large number of conditions of certification

1       that would apply. For example, the air quality  
2       construction conditions; a number of soil and  
3       water conditions; a number of the biology and  
4       cultural conditions, in fact I think all the  
5       cultural conditions.

6               So this is an issue that may -- it's not  
7       clear to me that the parties are necessarily in  
8       agreement at this point as to which conditions  
9       should or shouldn't apply. We'll put our  
10      recommendations in writing on the 14th.

11             Next I'd like to move into some of the  
12      substantive issues that were discussed both in  
13      other parties' comments and earlier this afternoon  
14      by the applicant.

15             The first one has to do with the  
16      sufficiency of the staff's alternative cooling  
17      analysis. This was an issue that was addressed  
18      both in the parties' written comments and then  
19      earlier today by Mr. Ellison.

20             And I want to make it clear that our  
21      focus in making these -- staff's focus in making  
22      these comments is not to re-argue the question of  
23      feasibility of alternative cooling at this  
24      hearing, but to strongly encourage the Committee  
25      to take a broader view of its authority to look at

1 alternatives, particularly alternative sizes.

2 We'd note that although the alternative  
3 that staff analyzed, which incidentally was based  
4 on information provided to us by the applicant,  
5 does result in less peaking capacity than what the  
6 applicant has proposed for its new facility. It's  
7 actually an increase in its capacity compared to  
8 the existing facility.

9 We think for the Committee to take a  
10 very narrow view of this authority to examine  
11 smaller alternatives or alternatives that include  
12 different project features or exclude certain  
13 project features is unnecessary and unwarranted.

14 Secondly, this is a relatively minor  
15 point having to do with the discussion of  
16 cumulative impacts. Staff does not disagree with  
17 the applicant that if there are no impacts, direct  
18 impacts from the project, that there are no  
19 cumulative impacts. That's not what we are  
20 arguing.

21 We do disagree with the applicant that  
22 there are no direct impacts from this project.  
23 But we're not seeking to re-argue that issue here.

24 The point that we tried to make in our  
25 comments, and that we would like to reiterate

1 here, is that our concern is that the Commission  
2 decision could be interpreted to include -- to  
3 exclude past projects from a discussion of a  
4 project's contribution to cumulative impacts.

5 Mr. Ellison raises the point that  
6 sedimentation is not a project. That's correct.  
7 But projects can cause sedimentation. And if  
8 sedimentation is a problem in an estuary, and the  
9 project that the Commission is considering also  
10 causes problems in the estuary, it's appropriate  
11 to include those past projects in the discussion  
12 of cumulative impacts.

13 So, again, we're not disagreeing with  
14 the applicant that if there are no direct impacts,  
15 the project cannot be deemed to contribute to  
16 cumulative impacts. But we do want to encourage  
17 the Committee to take a broader view of its  
18 authority to look at the cumulative impacts  
19 question.

20 Thirdly, I'd like to address the  
21 comments that were made earlier this afternoon --

22 HEARING OFFICER FAY: I'm sorry, let me  
23 stop you there before we leave cumulative. You  
24 talked about the other stressors in the estuary.  
25 But in your written remarks you also talked about



1 combining various effects of the project.

2 And I'll ask you what I asked Mr.  
3 Ellison. If the project, the proposed project,  
4 has virtually the same thermal impacts, and if it  
5 has a reduction of impingement impacts and a  
6 reduction of entrainment impacts, how can there be  
7 a cumulative impact?

8 MS. HOLMES: Well, I think the reason  
9 that we're reaching a different answer than you  
10 are is that staff does not agree that there are no  
11 direct impacts from the project.

12 If staff were to have concluded that  
13 there were no direct impacts from the project,  
14 then staff would also agree that there is no  
15 contribution to the cumulative impact.

16 HEARING OFFICER FAY: Okay. All right,  
17 I understand. And at what point do you  
18 differentiate between something that causes  
19 sedimentation and the existing environment? In  
20 other words, is every farm since the European  
21 arrived in California a project?

22 MS. HOLMES: You've asked a very  
23 difficult question. It's addressed, I believe,  
24 perhaps in some of your cases, but I know in other  
25 Energy Commission cases.

1           The question concerns the connection, if  
2   you will, between using a concept of baseline of  
3   the existing environment, and using that as a  
4   starting point for doing an environmental  
5   analysis, and the direction that CEQA provides to  
6   include past projects in the cumulative impact  
7   analysis. And it's a tricky question.

8           In this instance we believe that given  
9   that the staff's position is that there are direct  
10   impacts, and that there are a number of other  
11   activities that have gone on and are continuing to  
12   go on in the area that are contributing to stress  
13   on the estuary, that it's appropriate to include  
14   those in a cumulative impacts analysis.

15           HEARING OFFICER FAY: All right. If  
16   that is appropriate, and you weigh that against  
17   allowing the Committee's assumption that the  
18   various marine impacts of the project are less  
19   than the existing marine impacts, don't you still  
20   come out with a net that is less than the current  
21   situation?

22           MS. HOLMES: If the project impacts are  
23   being -- if this project's impacts are being  
24   reduced relative to the existing project's  
25   impacts, then you do not have a contribution to

1 cumulative impacts. That's clear.

2 HEARING OFFICER FAY: Thank you.

3 MS. HOLMES: The next point I wanted to  
4 make has to do with some clarifications with  
5 respect to the issue of nexus. I think it's  
6 important to understand that staff is not saying  
7 that there is no nexus at all. We agree that the  
8 experts, including the staff witnesses, believe  
9 that gobies may well benefit from some of the  
10 activities that were identified in the HEP. The  
11 amount of benefit, I think it's fair to say, was  
12 uncertain.

13 The concern that we have about the nexus  
14 is it's not gobies that serve as the proxies for  
15 the estuary; it was all the species that were  
16 identified in the 316B studies. And those other  
17 species, some of which are affected at much higher  
18 levels than gobies, may well not benefit from the  
19 HEP that's been proposed by the applicant.

20 When staff asked questions about the  
21 kinds of benefits that would accrue to all those  
22 other species, which also serve as the proxies,  
23 the answers were equivocal, at best. We think  
24 that there's no basis for the Committee to make a  
25 finding that all of the species will benefit when

1 the evidence appears to be focused predominately  
2 on the gobies.

3 We would like to see the HEP provide  
4 benefit to all of the impacted species, not just  
5 one species.

6 I'd like to also address the question of  
7 the Coastal Commission report. First of all,  
8 staff disagrees, as we stated in our written  
9 comments last fall, with the applicant's  
10 conclusion that the Coastal Commission report is  
11 not required. I don't think we need to go into  
12 that in any great detail here.

13 Our concern about the Coastal Commission  
14 report is that the PMPD doesn't expressly  
15 acknowledge a number of the recommendations in the  
16 report and make the findings with respect to those  
17 specific recommendations.

18 As the Committee is aware, the only  
19 basis for rejecting the findings of the Coastal  
20 Commission report with respect to project  
21 modifications that may be needed to be consistent  
22 with the Coastal Act are that the measures would  
23 be infeasible or would cause greater environmental  
24 harm.

25 We recommend that if the Committee does

1 not want to implement those conditions, that it  
2 make express findings. And as Mr. Ellison pointed  
3 out, tie them expressly to the recommendations of  
4 the Coastal Commission report, itself.

5 With respect to the discussion on the  
6 measures that were recommended for dealing with  
7 aquatic resources, staff is concerned about the  
8 discussion in the PMPD that implies that the  
9 Coastal Commission's recommendations were rejected  
10 because the Coastal Commission appeared to have  
11 relied on the FSA only. Not only is that not  
12 true, but it's not an appropriate basis for not  
13 implementing the Coastal Commission's  
14 recommendations.

15 Similarly, the Committee's finding that  
16 there's no impact under CEQA is also not a basis  
17 for failing to include the Coastal Commission's  
18 recommendations as conditions of certification.

19 HEARING OFFICER FAY: Let me stop you  
20 there. If the Committee finds no impact and the  
21 Coastal Commission says to mitigate an impact you  
22 must do X, is it feasible for us to implement that  
23 recommendation?

24 MS. HOLMES: I think that there's a  
25 couple of issues that you're addressing in your

1 question. The first one is whether or not the  
2 Coastal Commission is required to use a baseline  
3 of existing conditions for purposes of making  
4 recommendations for the Coastal Act that you are  
5 required to use when you make your decisions  
6 pursuant to CEQA.

7 And I think the Coastal Commission's  
8 report speaks for itself, and says they did not  
9 use a CEQA baseline for their determination. This  
10 is because of the directive that they have under  
11 their statutory provisions to restore and enhance  
12 the environment. And I think that that's  
13 discussed in the Coastal Commission's report. I'm  
14 reluctant to make legal arguments on their behalf  
15 here, but I --

16 HEARING OFFICER FAY: It's discussed,  
17 but there's no citation to the Coastal Act and its  
18 authority. And if, assuming there is legal  
19 authority for their position, how do you reconcile  
20 the two requirements? That is that we accept the  
21 Coastal Commission's report's recommendations and  
22 that we judge power plants according to the Warren  
23 Alquist Act and CEQA, when there appears to be an  
24 incompatibility here, if the Coastal Commission  
25 can create a different baseline?

1 MS. HOLMES: Well, I don't read that as  
2 a incompatibility. The Regional Board uses a  
3 different baseline for purposes of 316B, and the  
4 Committee hasn't found that to be incompatible  
5 with CEQA, either.

6 I think the situation is that when  
7 you're dealing with plants that are located in the  
8 coastal zone, there is an addition, more specific  
9 set of requirements that apply to Commission  
10 decisions that would license those projects.

11 Those more specific provisions include  
12 the Coastal Act and those provisions are  
13 interpreted for the Commission by the California  
14 Coastal Commission, and implemented by the  
15 Commission in its decision.

16 HEARING OFFICER FAY: Okay, I hope the  
17 parties will address in some detail the legal  
18 authority the Coastal Commission has for claiming  
19 they can apply a zero baseline. Because the  
20 Commission certainly cannot, under CEQA.

21 Sorry to interrupt you. Go ahead.

22 MS. HOLMES: With respect to the  
23 terrestrial biological recommendations that the  
24 Coastal Commission made, I think staff has to  
25 disagree with CAPE in identifying those as

1 relatively minor. The dollar amounts are  
2 important. And staff believes that the dollar  
3 amounts that it derived, in conjunction with the  
4 other resource agencies, including the Coastal  
5 Commission, National Marine Fisheries, Department  
6 of Fish and Game, Department of Parks and  
7 Recreation, and U.S. Fish and Wildlife Service are  
8 appropriate and fully meet the constitutional  
9 requirements of nexus and proportionality.

10 Our concern is that there not be a  
11 perception that the Committee is simply re-  
12 weighing evidence and characterizing anything  
13 that's inconsistent with the way the Committee  
14 weighs the evidence, as unconstitutional. We  
15 think that there's a statutory scheme whereby the  
16 predominant responsibility for interpreting what's  
17 required under the Coastal Act belongs  
18 appropriately to the Coastal Commission.

19 And when they make those recommendations  
20 to the Commission, the Commission should accept  
21 them, unless it can make the findings of  
22 infeasibility or greater environmental harm.

23 We support the findings of the Coastal  
24 Commission, the Energy Commission Staff does. If  
25 the Committee finds that they are infeasible or



1 would cause greater environmental harm, we  
2 encourage the Committee to make explicit findings  
3 and to tie them to the specific recommendations in  
4 a final decision.

5 Lastly I'd like to address the issue of  
6 how to determine the appropriate level of what we  
7 call short-term impacts. First of all, we commend  
8 the Committee for recognizing the importance of  
9 short-term impacts and the need to evaluate them  
10 in its decision.

11 We're concerned that the way the  
12 Committee has done so is not the best way to do  
13 it, as the Committee has used a pump capacity. As  
14 we pointed out in our comments, there is not  
15 evidence in the record that the pump capacity was  
16 reached for any significant period of time.

17 To respond to Mr. Ellison's concerns  
18 earlier about why staff didn't ask this question,  
19 I'm sure the parties will recollect that the  
20 staff, in its briefs on the aquatic biological  
21 resources issues, indicated that we didn't think  
22 that the mere baseline was a particularly  
23 meaningful exercise. We found that the amount of  
24 variability in spawning events and other life  
25 cycle events that occur in the estuary make

1 picking a bright line numerical baseline difficult  
2 and implies a precision that actually isn't  
3 warranted.

4 So the reason that we didn't ask for  
5 that information is because we weren't using that  
6 approach. However, the Committee soundly rejected  
7 the staff approach in the PMPD. And in response  
8 to that we have raised some concerns about the way  
9 that the Committee has picked the number of  
10 results to use.

11 We think that using a pump capacity that  
12 may never have been reached, or at least that  
13 there is no evidence it's been reached, is a  
14 dangerous decision to make.

15 With respect to Duke's offer of proof,  
16 it seems that two of the items that they would  
17 offer into evidence if they could have to do with  
18 why water use occurred in the past. It seems to  
19 me that the facts ought to speak for themselves.  
20 Why the water use occurred would be irrelevant.  
21 And the question would be what was the water use,  
22 not why was the water use what it was.

23 Interestingly enough Mr. Ellison said  
24 that, if I understood him correctly, staff's  
25 analysis is meaningless because it's not

1 correlated to past impacts. And that's precisely  
2 our point is that there's no evidence in the  
3 record, nor do I believe that there can be  
4 evidence in the record that conclusively shows  
5 what level of impacts occurred in the past.

6 All we know now is that there is a  
7 proposed facility that at 80 or 90 or 100 percent  
8 capacity is likely to use more water than what we  
9 have indicated in the one document that we have  
10 that shows past water use, exhibit 187. That  
11 exhibit shows monthly water use. And as staff  
12 pointed out in their PMPD comments, even  
13 relatively modest assumptions about future  
14 operation show that future operation is likely to  
15 exceed those past historical numbers a  
16 considerable portion of the time.

17 Finally, --

18 HEARING OFFICER FAY: Let me interrupt  
19 you there. Because exhibit 187 contains monthly  
20 averages, do you have any reference to the record  
21 that shows that the pumping maximums were not  
22 reached during those months?

23 MS. HOLMES: This is my recollection and  
24 I'm sensitive about not trying to introduce new  
25 evidence, my recollection is that I asked for

1 dailies and was told they were not available from  
2 the Regional Board. Mr. Thomas is here and can  
3 probably answer that.

4 My understanding is that this is the  
5 only record that exists of past historical water  
6 use. But I suggest that perhaps when we get a  
7 chance we can ask Mr. Thomas that.

8 HEARING OFFICER FAY: But it seems to me  
9 that since these are monthly averages you can't  
10 reject the possibility that those pumps operated  
11 at maximum for some period of time.

12 MS. HOLMES: They may have. And our  
13 point is not that they didn't operate at maximum  
14 ever, but even if they operated at maximum for,  
15 you know, 24 hours a day for three or four days a  
16 month, our point is that if you look at the  
17 monthly numbers, if you use the month as the  
18 period of time over which you measure short-term  
19 impacts, relatively modest assumptions about how  
20 the new plant will operate indicate that the new  
21 plant's water use would increase compared to those  
22 monthly averages.

23 In other words, we didn't break it down  
24 further than monthly because monthly is the only  
25 data that we have in the record.

1 HEARING OFFICER FAY: But over the year  
2 they would decrease, correct?

3 MS. HOLMES: They are what they are.  
4 And if you look at exhibit 187, they vary --

5 HEARING OFFICER FAY: I mean the new  
6 plant versus the old plant would, over the year's  
7 period, have a lower average daily use.

8 MS. HOLMES: It must if the permit  
9 condition that the applicant has proposed to the  
10 Regional Board is implemented.

11 But because those are annual averages,  
12 on a monthly basis they could be much much higher.  
13 And, in fact, staff's position is that there's  
14 evidence in the record indicating that (inaudible)  
15 times of year it's quite likely that those numbers  
16 will be much higher than the annual averages. And  
17 that's our concern.

18 Earlier this afternoon there was a  
19 discussion from Mr. Ellison saying that even if  
20 there were increases they don't represent  
21 significant adverse impacts because they're offset  
22 and they're temporary. I'd like to address both  
23 of those points.

24 In the first place, with respect to  
25 being offset, there is no evidence that they're

1 offset. And that is our concern. Because it is  
2 so difficult to correlate water use with the  
3 destruction of larval life that occurs in the  
4 estuary, it's very difficult to say that because  
5 there is an impact in one day it's going to be  
6 offset the next. And that's our concern. That's  
7 why staff has recommended a significant reduction  
8 in water use at the new facility.

9 Second, a single event may be temporary,  
10 but it happens again and again and again. And  
11 that's why staff has referred to these events as  
12 short-term. They are short term because when the  
13 plant uses a lot of water, when there's a lot of  
14 reproductive activity going on in the estuary,  
15 there's a lot of larval mortality. That's  
16 temporary.

17 But if it happens again and again and  
18 again, it creates a significant adverse impact.  
19 So calling it temporary, I think, is inaccurate.  
20 I think it's short term, and I think the Committee  
21 has done the right thing in identifying the need  
22 to address short-term impacts.

23 PRESIDING MEMBER KEESE: Are you  
24 referring to short term for any species? And  
25 would you accumulate, if it was short term in May

1 for one species, October for another species --

2 MS. HOLMES: I think those -- when you  
3 have repeated short-term events they constitute  
4 significant impacts, regardless of whether  
5 they're, whether it's --

6 PRESIDING MEMBER KEESE: You're not  
7 saying short-term impacts over a ten-day period  
8 for one species. You're saying whenever, during  
9 the year --

10 MS. HOLMES: We're saying that we're  
11 concerned that it's quite likely that there could  
12 be a short-term impact -- I'm going to get this  
13 wrong because I'm not the biologist, but bear with  
14 me -- there could be a short-term impact to comb-  
15 tooth blennies in April because the plant pumps a  
16 lot of water when there's a lot of spawning of  
17 those species going on.

18 And then in the summertime when the  
19 gobies spawn, again water use goes up. And in the  
20 fall maybe there's some other species that goes  
21 through spawning at a time when there's a high  
22 demand for power, and hence for water, that those  
23 types of repeated short-term events constitute the  
24 significant impact.

25 PRESIDING MEMBER KEESE: And do we have

1 any evidence in the record that ties the power  
2 plant generation, or anticipated power plant peak  
3 generation with spawning periods for any  
4 particular species?

5 MS. HOLMES: My recollection of the 316B  
6 study is that it identifies that there are  
7 spawning events that occur for different species  
8 throughout the year.

9 PRESIDING MEMBER KEESE: Correct. But,  
10 if I recall, not particularly focused. They vary  
11 by year, also.

12 MS. HOLMES: I can't answer that  
13 question, I'm sorry, I'm not enough of a  
14 biologist.

15 PRESIDING MEMBER KEESE: I'm just asking  
16 if we have any evidence to tie the two together.  
17 We were not able to find any on our first shot.  
18 Thank you.

19 HEARING OFFICER FAY: Anything further?

20 MS. HOLMES: No, I think I will conclude  
21 just simply by recommending that the Committee  
22 make the changes that staff and the Coastal  
23 Commission have recommended to the PMPD.

24 HEARING OFFICER FAY: Okay. I have a  
25 few questions. Have you seen the letter from the



1 U.S. Fish and Wildlife Service regarding the snowy  
2 plover?

3 MS. HOLMES: No, I have not.

4 HEARING OFFICER FAY: Okay. Is there  
5 any reason concerning project objectives that the  
6 Committee could not accept the definition of this  
7 project, and yet still preserve the option of not  
8 being locked into accepting whatever a developer  
9 proposed?

10 In other words, is it necessarily the  
11 same in staff's mind that the Committee take the  
12 position it took in the proposed decision, and not  
13 at the same time sort of, in staff's mind, give up  
14 the jurisdictional discretion to adjust project  
15 descriptions according to whatever the Commission  
16 thinks is the most appropriate?

17 MS. HOLMES: Well, again, staff thinks  
18 that it would be more prudent to not specifically  
19 draw a narrow interpretation of the Commission's  
20 authority to look at project alternatives in this  
21 case.

22 If the Committee wishes to do so, then  
23 my recommendation would be that you identify the  
24 criteria that you use to say that accepting the  
25 applicant's capacity figures for estimates are

1 binding in this case, but would not be binding in  
2 another case.

3 So, you can identify the criteria for  
4 reaching that conclusion in this. It would  
5 probably be better than not doing so. But we  
6 would still recommend that you, instead, adopt a  
7 broader discussion or identification of your legal  
8 authority to look at different sized projects.

9 HEARING OFFICER FAY: And are you going  
10 to provide us with any information on a  
11 recommendation regarding habitat compensation  
12 management costs? You indicated that, I guess, in  
13 essence because the Committee had whittled down  
14 the total amount, that that wasn't going to work,  
15 if proportionately you whittled down the  
16 management costs, too.

17 MS. HOLMES: Our experience in other  
18 cases has been that when you're dealing with  
19 smaller amounts of money and potentially smaller  
20 amounts of habitat, the per-acre costs increase.  
21 Staff's recommendation was simply that the  
22 Committee confer with the National Estuary Program  
23 to determine whether these are still sufficient.  
24 If the Committee would like staff to undertake  
25 that activity we can do that.

1           HEARING OFFICER FAY: Well, the best  
2           thing would be to have a dollar figure. If the  
3           National Estuary Program can provide that, you  
4           know, through staff, that would be helpful.  
5           Otherwise, I suppose we could link them in with  
6           the CPM in some kind of consultation role.

7                     But I think we'd prefer a dollar figure,  
8           if we could. Or a percentage figure. Something  
9           like that. Some guidance.

10                    Any problem with the City of Morro Bay's  
11           recommendation regarding the specific provisions  
12           from the agreement to lease that they would like  
13           included in the conditions of certification? I  
14           think, you know, one was the minimum tax money.

15                   MS. HOLMES: Staff proposes including  
16           provisions from the agreement to lease unless they  
17           are necessary to mitigation significant adverse  
18           environmental impacts or are required for LORS  
19           conformity. We think that --

20                   HEARING OFFICER FAY: What is they were  
21           taken into account by the Committee in terms of  
22           socioeconomic benefits? Doesn't it make sense  
23           that if they were relied upon the analysis that  
24           they'd be locked in, in terms of a condition of  
25           certification? I'm not talking about referencing

1 the entire agreement to lease.

2 MS. HOLMES: Staff doesn't think that  
3 it's legally necessary, but if the Committee  
4 wishes to do so we don't have an opposition to  
5 that.

6 HEARING OFFICER FAY: And any reaction  
7 to Patti Dunton's recommendation to exclude human  
8 remains from the recordation provisions?

9 MS. HOLMES: Let me check my notes on  
10 that. I did get extensive comments back from the  
11 staff -- or would you prefer that I put that in  
12 writing? I have extensive comments on --

13 HEARING OFFICER FAY: Why don't you put  
14 that in writing. Just be sure to --

15 MS. HOLMES: -- on the Coastal  
16 recommendations.

17 HEARING OFFICER FAY: -- be sure to  
18 address that. We'd like to have staff's take on  
19 that, as well. Okay, thank you very much.

20 And now let's hear from the City of  
21 Morro Bay.

22 MR. ELIE: Thank you, Mr. Fay, Chairman  
23 Keese, Commissioner Boyd, again welcome back to  
24 the fair City of Morro Bay. We appreciate your  
25 coming down here from Sacramento despite your many

1 obstacles. I won't -- to save time, I should be  
2 less than 15 minutes.

3 First comment relates to the snowy  
4 plover and page 6 of Duke's brief relating to Bio-  
5 T-15. Although Duke has changed its position a  
6 little bit today, we do concur in the change that  
7 Duke suggests.

8 And we haven't seen the letter from Fish  
9 and Wildlife, but would suggest that in light of  
10 what's already in the record, and the nature of  
11 the recommendations that were being proffered by  
12 staff of USFWS at that time, it would be more  
13 defensible to stick with what you have and not  
14 eliminate the required fencing, et cetera, for the  
15 plover. But we would suggest that it would be  
16 acceptable to the City if the City's property  
17 where the plover is would be included in that.

18 HEARING OFFICER FAY: Sorry, I'm  
19 confused. If U.S. Fish and Wildlife says there's  
20 no impact on the plover, why not just eliminate  
21 the fencing?

22 MR. ELIE: Well, I don't know what the  
23 letter says; it's not in the record. But that's  
24 also against staff recommendation, and we don't  
25 know. What is in the record has led the Committee

1 to have a condition of certification for the  
2 plover, so depending on what's in that letter,  
3 whether it's persuasive or not, we would stick  
4 with what --

5 HEARING OFFICER FAY: Okay.

6 MR. ELIE: -- Duke has suggested.

7 Duke has made some suggestions to  
8 changes to soil and water 1 and 2; I think it's  
9 just an omission. They list the City of Morro Bay  
10 for comments. It should, for consistency of the  
11 PMPD, say review and comment.

12 We strongly disagree with, and perhaps  
13 this is just as omission, Duke's recommendation on  
14 soil and water 7, which refers only to the  
15 Regional Board certifying the remediation being  
16 fully remediated. Throughout the soil and water  
17 conditions it has been the City and the Regional  
18 Board.

19 The City has its own enforcement,  
20 recognized by the Regional Board, and there was  
21 extensive testimony on that issue by Mr. Rohrer in  
22 the record. And this is one place where, perhaps  
23 by omission, Duke seems to be trying to exclude  
24 the City from the conditions of certification  
25 references. In fact, the verification references

1 the City.

2 Moving on to the staff's comments on the  
3 PMPD. I concur with Mr. Ellison's comments, he  
4 did accurately describe Fire Chief Jones'  
5 testimony and the concerns of the Fire Department  
6 with carbonylhydrazide versus the aqueous hydrazine.

7 A point of clarification with respect to  
8 CAPE's brief, the brief on marine impacts and et  
9 cetera. On page 3 at the bottom CAPE seems to  
10 imply that the entirety of the site is an ESHA.  
11 And the LCP does not designate the entirety of the  
12 site as an ESHA, only certain portions of it.

13 In fact, you may recall a lot of the  
14 testimony that went on was that the alternative  
15 sites suggested by staff actually encroached upon  
16 the ESHA portion of that property.

17 Also on page 25 of CAPE's marine brief  
18 there is a discussion about greater public need  
19 and no feasible less damaging alternatives. And a  
20 statement that the California Coastal Commission  
21 will approve a zone change. And Mr. Ellison  
22 highlighted for you earlier, it's the City of  
23 Morro Bay's zoning, not the Coastal Commission's.  
24 And also it's the City of Morro Bay's CLUP that's  
25 been approved by the Coastal Commission. And it's

1 not a situation where the Coastal Commission can  
2 override the City in order to force dry cooling.

3 As your question earlier, Mr. Fay, on  
4 the issue between whether the PMPD and the  
5 conditions of certification should reference PG&E.  
6 Mr. Ellison's response, well, it's appropriate to  
7 keep that because that's what's in the record.

8 I would note though that it is also in  
9 the record that the project owner will be building  
10 this project, et cetera. And essentially Duke's  
11 position seems to be leading you to interpret the  
12 contract with PG&E. We all know the financial  
13 situation of PG&E and the City's concern is that  
14 it be clear that the project owner will be the one  
15 building this plant, and they should be the ones  
16 that are responsible to the people. And thus,  
17 responsible for those conditions of certification  
18 being implemented properly. And there shouldn't  
19 be any doubt left in this decision, when it is  
20 approved by the full Commission, that it is the  
21 project owner.

22 As far as the socioeconomics, again, the  
23 items that we did pull out for socio 2, as we  
24 recommended, do come directly from the PMPD's  
25 reliance on those items. And as we've mentioned



1 in the papers, that is something that we feel  
2 should be -- since it is a benefit touted by the  
3 PMPD, it should be recognized in the conditions of  
4 certification.

5 Otherwise I'm available to answer your  
6 questions.

7 HEARING OFFICER FAY: Your comments on  
8 land use, in terms of adding language of adding  
9 lands for public use located within the City, or,  
10 and then just the reference to the Coastal Act.  
11 Does that satisfy it, as opposed to, or adjacent  
12 to the City or -- I mean --

13 MR. ELIE: Well, we would prefer in the  
14 City.

15 HEARING OFFICER FAY: Sure, but isn't,  
16 or adjacent to the City, more specific than as  
17 defined in section 30150 of the Coastal Act?

18 MR. ELIE: Yes, that's fine.

19 HEARING OFFICER FAY: Okay. I mean the  
20 idea is that it's not in the City, it's so close  
21 that City citizens can use it.

22 MR. ELIE: Benefit from it, sure.  
23 That's fine.

24 HEARING OFFICER FAY: Just wanted to  
25 clarify that. And what is your position about the

1       need for these extra wells? I just wanted to hear  
2       a little bit more about that, these sentry wells.

3               MR. ELIE: It will -- the addition of  
4       those two sentry wells will greatly assist the  
5       monitoring of the hydraulic drawdown. In other  
6       words, with the placement of these wells, which  
7       obviously we could work with Duke on that, and our  
8       expert John Rohrer can certainly tell them what we  
9       have in mind, these would be nonpumping wells  
10      basically to monitor the level, the water level,  
11      so that we can really determine with -- when  
12      you're looking at groundwater it's not like you're  
13      looking at a road. There's fractures; there's  
14      different implications of different portions,  
15      different areas within the aquifer.

16             So, in order to get a more complete  
17      picture we believe that you need more -- what's  
18      the word I'm looking for, not entry points, but  
19      more visual monitoring points.

20             And the idea of the sentry wells will  
21      also confirm hopefully that the MTBE contamination  
22      if not going into that same location.

23             So the idea of the sentry wells is  
24      twofold; one is to measure the drawdown in another  
25      location so you get a more complete picture of the

1 hydrogeology. And then secondly, also make sure  
2 that there is no drawing of the contamination if  
3 it is still in existence at that time.

4 HEARING OFFICER FAY: Absent those  
5 sentry wells being added, how would you determine  
6 the presence of MTBE or any contaminant?

7 MR. ELIE: Well, there already are wells  
8 to test that, but the change in circumstances  
9 addressed by this condition of certification is  
10 Duke actually starting to draw water for the  
11 construction phase, and for other phases of the  
12 project.

13 So, that's a change in circumstance,  
14 that's why we think the sentry wells are important  
15 once this situation comes to be.

16 So, it's not like today we would need  
17 those sentry wells. And, again, the MTBE is  
18 important, but secondary to the drawdown of the  
19 well fields and our ability to pump potable  
20 groundwater for the citizens.

21 HEARING OFFICER FAY: So is your  
22 position that the existing wells are just  
23 insufficient once the increased drawdown starts?  
24 That you need other data points, additional data  
25 points?

1 MR. ELIE: Yes.

2 HEARING OFFICER FAY: Okay. Thanks, Mr.  
3 Elie.

4 (Pause.)

5 HEARING OFFICER FAY: All right, now  
6 let's hear from CAPE. Mr. Naficy.

7 MR. NAFICY: Mr. Fay, good afternoon.  
8 Would it be possible to take a short break at this  
9 point?

10 HEARING OFFICER FAY: Oh, good  
11 suggestion. All right, let's do that now. Let's  
12 get back here at quarter to three, be about an  
13 eight-minute break, if we can do that.

14 (Brief recess.)

15 MR. NAFICY: Good afternoon and thank  
16 you for the opportunity to make these comments. I  
17 would like to point out that the format of this  
18 hearing is -- I feel like at least it's put us at  
19 a little bit of a disadvantage in the sense that  
20 we are hearing rebuttals or arguments here for the  
21 first time from the applicant.

22 And, you know, we didn't really -- they  
23 largely left the central issues or issues most  
24 important to CAPE, they largely didn't comment on  
25 those in their briefs. So really, I understand

1       that we'll get an opportunity to file rebuttals,  
2       but I would like to point out that we've sort of  
3       had to scramble to deal with some of the issues  
4       that they've raised.

5               And since we don't have the voluminous  
6       record here with us, it's hard to go to specific  
7       references. I guess we were somewhat -- we  
8       believed that presentations would largely include  
9       summaries and discussions of what the parties,  
10      themselves, have presented, rather than comments  
11      on the other side.

12             HEARING OFFICER FAY: Well, the notice  
13      did specify that the parties could reflect on the  
14      written comments from the other parties. So that  
15      was in your notice.

16             And also, you'll recall that I said at  
17      the beginning of this hearing that everybody, the  
18      parties will have two weeks to respond to matters  
19      that they heard for the first time at this  
20      hearing.

21             And also, to supplement what they might  
22      have otherwise said verbally.

23             So, I think that gives you all the  
24      flexibility you're asking for.

25             MR. NAFICY: I appreciate that. And I

1 want to join the other parties in actually  
2 commending the Committee in what must have been a  
3 very difficult task of really getting ahold of all  
4 the various issues and the large volume of  
5 evidence and argument that has been presented  
6 here.

7 We have taken issue with a number of the  
8 findings and a number of conclusions that the PMPD  
9 has made. And some of them, since there really  
10 was never discussed properly, we think we're going  
11 to raise here. But I do want to apologize for a  
12 somewhat disjointed nature of our presentation  
13 because it's a mixture of what we'd prepared and  
14 what we're presenting in rebuttal.

15 To my right is Ms. Bill Powers, who  
16 you're familiar with, as he presented testimony in  
17 this case before. He will have a short  
18 presentation.

19 Following that I'll have Mr. Peter  
20 Wagner and Tom Laurie are going to make a  
21 presentation regarding the so-called short-term  
22 impact issue, and a couple of points that Mr.  
23 Ellison has raised about volume of the Bay and the  
24 PM calculations.

25 And then I will, from that point on, go

1 through a series of other issues. But I wanted to  
2 give that brief introduction. So, without further  
3 ado I turn the microphone over to Mr. Powers.

4 MR. POWERS: Thank you, Babak. I'd like  
5 to just touch on two issues. One is the issue of  
6 plant capacity, and the other is the issue of the  
7 generic design that's been used to date in the  
8 evaluations both by Duke and by CEC Staff when  
9 evaluating the air cooled condenser.

10 And this figure is actually from exhibit  
11 168, which was a Duke Energy document. And it  
12 compares one of the central issues in this entire  
13 proceeding has been a kind of a disjunct between  
14 the facility the staff looked at when they looked  
15 at dry cooling, and what Duke Energy proposed.

16 And I'd like to point out that the AFC,  
17 which is exhibit number 4, identifies this project  
18 as a project that can produce 1200 megawatts at  
19 average site temperature, 57 degrees Fahrenheit.  
20 And that at some future date or later data the  
21 project was modified by Duke to produce 1200  
22 megawatts at 85 degrees Fahrenheit.

23 And the error in this figure is that  
24 Duke's proposed project, which is showing a flat  
25 line from 54 degrees to 74 degrees, indicating

1       that this project will produce 1200 megawatts  
2       across that load range.

3               And in fact this turbine will have a  
4       capacity, or this project, in its most recent  
5       format, will follow a curve that's essentially  
6       parallel to that middle curve. That if they can  
7       produce 1200 megawatts at 85 degrees, they can  
8       produce 1350 to 1400 megawatts at 54 degrees.

9               The PMPD is explicit that these turbines  
10       do not include any inlet cooling. They will be  
11       completely dependent on ambient temperature  
12       conditions. Turbines are strictly mass flow  
13       through is what provides you with power out. And  
14       on hot days you have light air; cooler days  
15       heavier air.

16              And so what we have at the ambient site  
17       temperature is not a 1200 megawatt project, but a  
18       1350 to 1400 megawatt project. And the PMPD does  
19       indicate that it is the Presiding Commissioner's  
20       viewpoint that staff was attempting to restate the  
21       project in the evaluation they did for alternative  
22       cooling. I think that is not the case. That the  
23       project has actually been restated by Duke.

24              It is a much bigger project than is  
25       identified in the AFC. And that staff correctly



1 pointed out in their rebuttal to Duke that the  
2 moving to 85 degrees, 1200 megawatts, is a  
3 convenient mechanism for making the air cooled  
4 condenser so large that it will not fit on the  
5 alternative site 1 plot.

6 The next point I'd like to make relates  
7 to the generic model used by both Duke and by  
8 staff in evaluating the air cooled condenser. I  
9 gave a presentation here in June of 2002 pointing  
10 out that almost the entire issue related to  
11 constructibility, delays in project time, which is  
12 identified in the PMPD as the bulk of the cost  
13 associated with air cooling, related exclusively  
14 to trying to put the entire air cooled condenser  
15 system on one site, site 1 or site 2. Actually  
16 site 1.

17 And that by simply splitting the air  
18 cooled condenser one ACC block with one of the 600  
19 megawatt blocks, putting one on alternative site  
20 1, one alternative site 2 you eliminate this issue  
21 of constructibility and plot limitations.

22 And would like to point out that Duke  
23 did go to the extraordinary measure of having the  
24 business manager of GEA Power Cooling Systems  
25 testify that air cooled condensing would not work

1 at this site.

2 Mr. Ortega testified that air cooled  
3 condensing would not work on alternative site 1,  
4 as laid out by Duke Energy. He did cross my  
5 testimony, there are several pages of that cross  
6 in the record. At no time did he indicate that he  
7 thought that splitting the air cooled condenser  
8 between site 1 and site 2 was infeasible. And he  
9 had every opportunity to do that.

10 And finally, I'd like to point out how  
11 the Energy Commission has approved what could be  
12 considered an urban template for an air cooled  
13 condenser, which is the Otay Mesa air cooled  
14 condenser. That unit is low height, 75 feet; low  
15 noise. And that the CEC Staff does have the  
16 option of using what can be considered an urban  
17 template when evaluating the impacts of an air  
18 cooled condenser at a site like Morro Bay.

19 Thank you.

20 HEARING OFFICER FAY: Mr. Powers, why  
21 didn't you bring this up during the evidentiary  
22 portion of the case?

23 MR. POWERS: I actually presented a  
24 PowerPoint presentation on this on June 5, 2002.  
25 I think everyone that is present at the table

1 today was at that presentation.

2 HEARING OFFICER FAY: Of the split  
3 facility?

4 MR. POWERS: Yes, I did.

5 HEARING OFFICER FAY: Okay.

6 MR. POWERS: In fact, it was my  
7 expectation that having presented what seemed to  
8 me to be an obvious solution to this problem, that  
9 the CEC Staff would be directed by the  
10 Commissioners to evaluate and update the  
11 alternative evaluation.

12 In fact, I presumed that we would have,  
13 at that June 5th/June 6th hearings, resolved the  
14 issue of whose project we were dealing with and  
15 make certain that the staff was looking at  
16 whatever the situation would be, that that would  
17 be dealt with.

18 But there actually has been no change in  
19 the evaluations, even from prior to the June 5th  
20 hearing.

21 HEARING OFFICER FAY: Okay.

22 DR. WAGNER: Good afternoon. My  
23 testimony was going to be read, but I think in the  
24 interest of time I'll try to paraphrase it. And I  
25 can simply submit to you what I would have said,

1 and it's written down.

2 This deals with the conclusion of law on  
3 page 301, item 3 that says, quote, "There's no  
4 need to consider alternatives to once-through  
5 ocean cooling pursuant to CEQA because such  
6 cooling will not have a significant adverse  
7 environmental impact pursuant to CEQA."

8 It is based on the assumption that,  
9 quote, and this is page 299, item 8, "The amount  
10 of cooling water usage is an appropriate measure  
11 and the best evidence of the impacts entrainment  
12 effects."

13 We don't agree. We think this is  
14 incorrect. In reality, specify the annual average  
15 daily water consumption is insufficient to  
16 characterize entrainment, either at the existing  
17 plant or estimate for the proposed plant, because  
18 entrainment mortality depends significantly on the  
19 operating schedule assumed in both cases.

20 And I think I'll just go right on to the  
21 chart there. This is based on existing data.  
22 There's nothing new in here. It's simply using  
23 arithmetic to devise different scenarios that show  
24 our point.

25 HEARING OFFICER FAY: So does this chart

1 appear in our evidentiary record?

2 DR. WAGNER: No. It's, as I say, we're  
3 just interpreting. There was one numerical  
4 calculation submitted on June 6, 2002, yes. But  
5 this is really supposed to be illustrative of the  
6 fact that what you get for mortality depends on  
7 what you assume for an operating schedule. That's  
8 all it is. It's merely illustrative.

9 If you look at the first column that  
10 simply shows how the well known 17 to 33 percent  
11 of mortality figure was derived. It assumed that  
12 either plant consumed 427 million gallons a day  
13 steadily chugging along every month for 12 months.

14 The second scenario, and part of this is  
15 in rebuttal incidentally, to Mr. Ellison. Under  
16 the second scenario, which is the second one from  
17 the left -- then I'll have -- I realize it's a  
18 little hard for you to read, and I'll hand it  
19 in -- assumes the existing plant consumes 387  
20 million gallons a day, your figure. Every month,  
21 chugging along, for 12 months. And you obtain a  
22 larval mortality between 16 and 31 percent  
23 depending on whether you use mean (inaudible).

24 The third scenario which we believe is  
25 much more likely is that the existing plant

1 operates as a peaker at maximum output for as long  
2 as it can, mainly during the summer, while staying  
3 within 387 million gallons a day. And then simply  
4 shuts down.

5 The larval mortality then becomes 15 to  
6 23 percent. Again, this is straight plugging in  
7 the formulas in the 316B. There's nothing new in  
8 any of this.

9 Both of these cases, I think, are high  
10 estimates of mortality for the existing plant.  
11 Under B, that is the one where it goes along all  
12 year, it would have to run continuously all year,  
13 which as far as we know has never been the case.  
14 And is very unlikely to happen in the future.

15 Under C, where the plant operated as a  
16 peaker, it would operate at full output  
17 continuously not for days, but for many months,  
18 while maintaining the five-year average you  
19 adopted.

20 While nobody could predict the actual  
21 operation schedule and capacity factor, both of  
22 these scenarios do tend to over-estimate the  
23 capacity factor and operating schedule. I would  
24 be surprised if Duke didn't agree with that.  
25 Therefore, over-estimating the mortality.

1           Now, looking at the proposed plant, if  
2           you go through the same arithmetic, 370 million  
3           gallons a day, every day, every month for 12  
4           months, you will end up with 15 to 31 percent  
5           mortality. We don't think that the plant's going  
6           to run like that, either.

7           The last scenario is if the proposed  
8           plant operates a maximum hour from, we chose  
9           January through part of October, then shuts down  
10          so as to stay within the 370 million gallons a day  
11          limit, you get a mortality of 18 to 33 percent.

12          What we're trying to say here is that  
13          the mortality depends -- and it crosses the CEQA  
14          threshold, that's important -- the mortality  
15          depends on the operating schedule for either  
16          plant, not just the annual average daily water  
17          consumption.

18          We think that the most likely scenarios  
19          would be that the existing plant would operate  
20          under C or maybe even below scenario C, probably  
21          below scenario C for summer peaking and periods of  
22          high demand when competitive efficiency with the  
23          other generators is less important than just the  
24          sheer availability of power.

25          The new plant, on the other hand, being

1 a baseloader, or at least intermediate, would be  
2 much more likely to operate continuously for many  
3 months at a time, I believe that's what's planned,  
4 approaching scenario C. If that's the case, then  
5 I think it's clear that the larval mortality under  
6 what we regard as the most likely future, it's  
7 going to be quite a bit higher for the new plant  
8 than the old one, 18 to 33 percent versus 15 to 23  
9 percent. Even though the annually averaged water  
10 at 370 million gallons a day is lower than for the  
11 new plant than the 387 for the existing plant.

12 It's kind of counterintuitive; it  
13 basically says that how long you leave the plant  
14 running is more important than the average,  
15 annually average daily water.

16 We recognize that this finding is  
17 conjectural. But we think much less so than the  
18 unrealistic estimate -- assumptions, rather, of  
19 continuous year-long operation of either plant  
20 that has been employed in the PMPD.

21 Any decision involving future  
22 entrainment mortality, future entrainment  
23 mortality, will necessitate common sense, I  
24 believe you said rule of reason, estimation of  
25 operating schedules and capacity factors because



1 the average annual daily water use just isn't  
2 enough to tell you what the larval mortality will  
3 be.

4 We'd be happy to share these numbers  
5 with anybody. Anybody who has anything to do with  
6 this can work them out on their own. Staff can.  
7 Duke can. There's no trouble with that.

8 Now, Tom, I think has a comment or two.  
9 Thank you.

10 HEARING OFFICER FAY: Are you going to  
11 include this chart in your filing?

12 DR. WAGNER: Oh, yes.

13 HEARING OFFICER FAY: The filing in two  
14 weeks?

15 DR. WAGNER: Very definitely. In fact,  
16 we can leave it with you today.

17 MR. ELLISON: Mr. Fay, I've been trying  
18 not to interrupt, but this is clearly new  
19 evidence. And it's the same thing as, you know, I  
20 mentioned this at the top of our comments with  
21 respect to a number of the things that have come  
22 in. And I'm responding to your suggestion that  
23 this be included.

24 Are we accepting new evidence as part of  
25 the comments?

1 HEARING OFFICER FAY: No. No, we're  
2 not.

3 MR. ELLISON: Because if we are, we've  
4 got some, too.

5 HEARING OFFICER FAY: But if he's  
6 putting it up in front of us to consider, and he  
7 wants it, you know, more than a fleeting comment,  
8 then I just think he ought to include it. But, we  
9 cannot deal with anything that was not in the  
10 evidentiary record. We're bound by the evidence  
11 of record.

12 MR. NAFICY: May I address Mr. Ellison's  
13 point briefly?

14 HEARING OFFICER FAY: Sure.

15 MR. NAFICY: We could just take that  
16 chart off and never return it to you and keep Mr.  
17 Wagner's testimony, which really goes to what we  
18 believe is the Committee's responsibility  
19 consistent with CEQA, to do some amount of  
20 projection as to how the new plant will be  
21 operating. And do some amount of examination  
22 consistent with the evidence we have of the year  
23 2000 as to how the plant is actually being  
24 operated.

25 As Dr. Wagner has put it, this is really

1       supposed to illustrate these theoretical concepts.  
2       And illustrate some of the assumptions that has  
3       gone into CAPE's analysis.

4               Now, again, if Mr. Ellison has a problem  
5       with us actually submitting the chart that he was  
6       reading off of, and the text of what he  
7       paraphrased, we can just not submit it. And, you  
8       know, just rest on our public comments -- on our  
9       comments right now. But I don't think that really  
10      will accomplish anything and it seems  
11      counterintuitive.

12             HEARING OFFICER FAY: I just want  
13      everybody to understand that there is no testimony  
14      being received today. These are all comments.  
15      And to the extent that someone varies off into new  
16      material, we just can't take it into account in  
17      changing the proposed decision.

18             DR. WAGNER: I'll just re-emphasize the  
19      fact that it really isn't new material. And it's  
20      partly in rebuttal to Mr. Ellison.

21             HEARING OFFICER FAY: Sure.

22             MR. LAURIE: At the June 6th hearing we  
23      admitted nine different versions of the PM  
24      calculations into evidence. And these versions  
25      covered various scenarios that we thought were

1 errors in the way the impacts were calculated.

2 So there's nothing new in this  
3 regurgitation of the calculations except that we  
4 have submitted scenarios for actual operating  
5 profiles. The only database which exists for  
6 Morro Bay is the year 2000 plankton samples that  
7 were taken to make the calculations for the  
8 entrainment impacts. No other database is  
9 available. So, it's reasonable to float different  
10 cooling water volumes into that database.

11 Now, at Moss Landing you did a -- used  
12 the exact same model, or Duke used the exact same  
13 model that was used in Morro Bay. And they  
14 calculated entrainment impacts in front of an  
15 intake structure which hadn't sucked a drop of  
16 water for five years. And the input to the model  
17 is a theoretical cooling water volume, which was  
18 going to be used by the new units.

19 In the case of Moss Landing you accepted  
20 the impacts based on the maximum cooling water  
21 available. In Morro Bay the cooling water volume  
22 was adjusted, theoretical cooling water that would  
23 be used in the intake structure was adjusted to  
24 427, as a 90 percent cycle.

25 But, in reality the old plant was

1 withdrawing cooling water from the intakes at  
2 whatever rates it was withdrawing. So, the model  
3 insists on 12 paired samples of plankton counts  
4 measured against the cooling water withdrawn for  
5 the month.

6 And in the case of the 316B study the  
7 cooling water was fixed for the entire year, and  
8 was fixed each month. But there's nothing in the  
9 model which prohibits you from adjusting cooling  
10 water volumes each month. It doesn't subtract  
11 from the integrity of the model, but it does allow  
12 you to make predictions about how impacts will  
13 vary based on different operating scenarios.

14 So operating scenarios can be changed  
15 monthly and you can still produce valid impacts  
16 with the model. So in that sense it's not new  
17 evidence, but it is perhaps a clarification. I'm  
18 not sure many people knew, and certainly Tenera  
19 wasn't willing to share the details of these  
20 calculations with anybody. We had to work them  
21 out, ourselves.

22 MR. NAFICY: Again, we've briefed this  
23 issue at some length, but I wanted to reemphasize  
24 that there is -- that CEQA does require some  
25 amount of projection into the future. And we

1 think that some of the scenarios we've presented  
2 show that likely, given all the assumptions that  
3 we have in this case, given the applicant's own  
4 testimony on predictions of capacity factors, it's  
5 very likely that the amount of operation of the  
6 plant is consistent with what scenario E was in  
7 the presentation.

8 We argued that the PMPD ought to make a  
9 consistency determination with respect to the  
10 Porter-Cologne Act. In particular, the section  
11 where it specifically addresses power plants or  
12 other industrial uses that actually withdraw  
13 cooling water.

14 Mr. Ellison commented this afternoon  
15 that indeed the Committee ought to make that --  
16 ought to include a determination regarding  
17 consistency with the Porter-Cologne, but that he  
18 urged the Committee to make a determination that,  
19 in fact, the PMPD is consistent based on the  
20 finding that there's no significant impact.

21 I think the problem here, or one problem  
22 with this analysis is that the consistency  
23 determination ought to also make a finding that  
24 all available means of reducing the impact on  
25 marine environment and marine resources are being

1 made. And there's simply no evidence of that.

2 There's no evidence that besides just  
3 planning a generic modern plant that based on  
4 modern technology it has certain pump capacity and  
5 certain output that any other efforts have been  
6 made to reduce the impact. Now, I know Mr.  
7 Ellison's going to get up and say, 370 mgd annual,  
8 that's another feature of their proposal. Which,  
9 I believe, would be disingenuous, and so I'm not  
10 going to have rebuttal time. I'm just going to  
11 say it will be disingenuous because of what they,  
12 themselves, predict is going to be the likely  
13 operation, the capacity of the plant.

14 We also take issue with both the PMPD  
15 and the applicant's analysis of the Committee's  
16 responsibilities and consistency determination  
17 with the Coastal Act and treatment of the  
18 California Coastal Commission's report.

19 We're troubled by the fact that the  
20 Committee seems to think that the CEC has the  
21 legal authority to, on its own, challenge the  
22 Coastal Commission's findings on some perceived  
23 deficiencies in the manner they participated in  
24 this process.

25 We believe that the law does not allow

1       for such challenges, or such analysis. And  
2       perhaps if the Committee is really serious about  
3       challenging the Coastal Commission's findings,  
4       then the proper avenue to challenge it would have  
5       been judicial action.

6               Now, I'm not sure if the Committee would  
7       have been -- have standing to do that, but in any  
8       event, I don't think that it's appropriate for the  
9       CEC to sit in judgment of the Coastal Commission's  
10      determinations which were made pursuant to the  
11      Coastal Commission's authority; and indeed,  
12      requirement, under the Warren Alquist Act.

13             We also believe that in order to make an  
14      independent consistency determination with the  
15      Coastal Act, it would be inappropriate for the CEC  
16      to use its CEQA analysis. And I understand that  
17      the Committee has directed the parties to brief  
18      this issue in their future filing. And I'll  
19      reserve the rest of my comments on that issue to  
20      my written comments. But we feel very strongly  
21      that, as was stated by Ms. Holmes, the correct  
22      analysis is akin to the analysis that is required  
23      under the Clean Water Act, in light of the  
24      absolute mandate of that statute, both of those  
25      statutes, to try to improve the quality and the



1 health of our marine resources, rather than allow  
2 an ongoing draw and depletion of those resources.

3 We're very troubled by the PMPD's  
4 analysis of what it takes to be the project's  
5 objectives. It's obvious there are lots of cases  
6 on this issue. Cases have held that a project  
7 can't be so narrowly drawn so as to preclude  
8 alternatives.

9 Now, Mr. Ellison today suggested that  
10 the difference between a 100 megawatt peaking  
11 capacity and 200 is so large, is such a big  
12 difference that it would preclude any other  
13 alternatives that would not include that extra 100  
14 megawatt.

15 Now, 100 megawatt, in kind of the  
16 context of a 1200 megawatt plant, or 1100  
17 megawatt, is less than 10 percent. If memory  
18 serves, the energy penalty for exporting  
19 electricity from this site over the mountains to  
20 the main central grid in the valley is 10 percent.

21 Ten percent just can't be, as a matter  
22 of law, a project that -- a lead agency has the  
23 authority in order to reduce a significant  
24 environmental impact, to require a smaller project  
25 that is smaller by less than 10 percent. It just

1 doesn't seem either consistent with the law or  
2 intuitive that the loss of that additional peaking  
3 capacity would render the project not consistent  
4 with Duke's objectives.

5 I also want to, I think, we need to take  
6 issue also with the conclusion of the PMPD that  
7 the goal of reducing visual impacts ought to be  
8 attributed to Duke, as well. There simply isn't  
9 any evidence of that, and that may well be the  
10 City's goal, although the City's own expert on  
11 visual seemed to indicate that the real problem  
12 was sort of the industrial and -- the industrial  
13 character of the plant in conjunction of views of  
14 the Morro Rock, itself.

15 And since that situation has not been  
16 improved, or will not be improved, it seems like  
17 the City's own expert is in conflict with what the  
18 Committee believes is one of Duke's objectives.

19 HEARING OFFICER FAY: Mr. Naficy, let me  
20 interrupt you here because I recall that from your  
21 written remarks.

22 What is the difference between whether  
23 Duke first thought of the visual benefits or if it  
24 was thrust upon them through negotiations by the  
25 City? If it was so important to cause Duke to

1 withdraw a prepared AFC and refile it, it seems to  
2 me that the City has a very strong role in this.  
3 And whether it's their visual objective or Duke's,  
4 because of the City's concern, that it's still a  
5 major objective.

6 MR. NAFICY: Mr. Fay, I'm just troubled  
7 by the fact that there's no evidence in the record  
8 that says that Duke had to make that concession  
9 and make that their objective, because otherwise  
10 the City would have not agreed to X or Y.

11 HEARING OFFICER FAY: Okay, I  
12 understand.

13 MR. NAFICY: So, yes, I mean if they're  
14 being forced, you know, if the City wants a polka-  
15 dot plant, and we know that unless the plant is  
16 going to be, you know, polka dot, there won't be  
17 any approvals from the City, then, yes, I concede  
18 the point. But there's just no evidence on that.

19 It bears point out on this point,  
20 though, Mr. Fay, also that there are other changes  
21 made to that location from the time it was first  
22 sent in and when it was revised -- it was  
23 withdrawn and refiled.

24 For example, the size of the project,  
25 itself, was more than double. So, it's not clear,

1 I don't think we can draw much conclusions from  
2 the fact that the project -- the AFC was withdrawn  
3 and resubmitted, as to what may have been the  
4 cause.

5 We're actually kind of -- I'm kind of  
6 dismayed that Mr. Ellison and Duke didn't really  
7 respond to this issue. Why is it that the  
8 existing plant must operate, while at the same  
9 time the new plant is being built?

10 Now, I understand from a business point  
11 of view why that would be preferable, obviously.  
12 But, again, in terms of the Committee, the PMPD  
13 has adopted that as one of the objectives of Duke.  
14 And I think there are many many many projects of  
15 this kind. But I mean, power plants being built  
16 without there being another plant next door also  
17 working and generating electricity.

18 So if there's nothing that precludes  
19 Duke or any other energy purveyor from building  
20 plants and not have another plant supplement their  
21 income. But overall, not just on this issue, but  
22 on other cost issues, there's definitely, there is  
23 a complete absence of economic analysis of whether  
24 or not the project is buildable but for these  
25 other features. The additional megawatts, the

1 current operation being ongoing, and also that  
2 actually includes the cost of dry cooling.

3 There's no evidence that the cost of dry  
4 cooling would go higher than once-through cooling.  
5 It may be, will make the project so expensive that  
6 it would be infeasible. And I believe that unless  
7 that showing is made, and the finding can be  
8 supported by evidence, the fact that Duke may  
9 prefer to have the existing plant in operation  
10 during construction does not really make that a  
11 project objective. The project objective has to  
12 be, just from a common sense point of view,  
13 modernizing a plant, not all these other things.

14 I want to mention also in passing that  
15 we're troubled by the PMPD's ignoring essentially  
16 TetraTech's analysis of dry cooling and whether  
17 it's possible and feasible, and its cost. Because  
18 we think that TetraTech -- because for one thing,  
19 the Regional Board is going to rely on that.

20 Mr. Fay, you asked Ms. Holmes a  
21 difficult question about the stressors and these  
22 other -- by stressors I mean not just  
23 sedimentation by other toxins, pollutants, et  
24 cetera, that may affect productivity of the Bay.  
25 And whether they should be considered cumulative,

1 as cumulative impacts.

2 I want to concur with Ms. Holmes on the  
3 fact that, on her answer which is, well, take your  
4 pick. They're either cumulative impacts or they  
5 are part of the existing environment. I want to  
6 point out, since we are sort of doing a summation  
7 of what the evidence has been, that up until group  
8 3 testimony when we were through that testimony,  
9 when we were really talking about marine  
10 environment, Duke experts really didn't address  
11 these at all. And in fact, claimed that they knew  
12 very little about these other stressors.

13 But then when we started talking about  
14 HEP, other Duke experts, such as Dr. Mayer,  
15 started talking about, oh, well, there's these  
16 other stressors, and chief among them  
17 sedimentation, which are impacting productivity of  
18 the Bay. And therefore we ought to, you know,  
19 this HEP is really needed.

20 So, I think it matters little really if  
21 you include them in cumulative impact analysis or  
22 describe the project environment in such a way  
23 that takes into account the existing and ongoing  
24 problems of these other stressors and the effect  
25 they have on productivity of the Bay.

1           Now, needless to say, we, being CAPE,  
2       we're very disappointed in the project's  
3       conclusion that there are no long-term or short-  
4       term environmental impacts. And we've gone to  
5       some length to work within the parameters that the  
6       Committee has set for the analysis of the baseline  
7       issue.

8           But we felt that it was important to  
9       also point out that CEQA does allow, and in fact,  
10      it would be appropriate in this case, to look at  
11      the project with fresh eyes. This is the so-  
12      called zero baseline analysis which is consistent  
13      with a whole line of cases. We cited, I think,  
14      one, the Ocean Meridian case, which is probably  
15      the most applicable and most important in this  
16      context.

17          Now, this project has been sitting there  
18      on the Bay for a very long time. Certainly from  
19      before we, as a nation, began to determine that  
20      protecting our coastal resources particularly is  
21      important.

22          When the 316B study was first designed  
23      and implemented I don't think very many people  
24      were very shocked that there's a significant  
25      impact going on in the Bay. But for the first

1 time there seemed to be some evidence of that.

2 Now, an analysis that would ignore this  
3 impact would really turn CEQA on its head. Now, I  
4 understand that you can make a strong argument  
5 that, no, this is really what's going on; there's  
6 some technical arguments about how the NPDES and  
7 WDRs that were issued by the Regional Board are,  
8 in fact, exempt from CEQA, et cetera.

9 But I think, you know, to borrow a  
10 phrase from Duke, let's have a reality check. If  
11 we don't look at this plant at its most  
12 fundamental level and the impact it has on the  
13 Bay, we really are doing a disservice to all these  
14 environmental laws. If we just allow this  
15 grandfather plant, and not take this opportunity  
16 where there is a proposal to renew it, to take a  
17 fresh look at the impact it has, and continue to  
18 assume that it will always be there, as it is,  
19 then we really -- that assumption, that approach  
20 would negate every environmental law we have.

21 As the PMPD shows, if you assume that  
22 there's no impact, then there's very little that  
23 we're going to require of Duke to do, other than  
24 to pay some money. And I think that's  
25 inconsistent with the Coastal Act, the Clean Water



1 Act. And, in fact, CEQA, where in a different  
2 part of it says that every effort should be made  
3 to protect our resources.

4 So, I really truly urge the members of  
5 the Committee to take a fresh look at this  
6 argument that you not only can, but should,  
7 consider this project as a serious affect on this  
8 Bay and not grandfather it for another 50 years.

9 And I think it's particularly  
10 appropriate and probably the best case for this  
11 kind of approach here because, as I said in our  
12 brief, this is not a case where the trees have  
13 been cut and the wetland has been drained. Duke  
14 has gone to great lengths to argue that there's no  
15 evidence that there's population level impacts.

16 Now, we agree that there's very little  
17 evidence, but since if we take them at their word,  
18 then we can take the dry cooling, we can eliminate  
19 once-through cooling and still have, in due time,  
20 an intact estuary. Again, the plant, itself,  
21 doesn't encroach on the Bay. And that's a big  
22 difference between this situation and those cases  
23 where the planning, the lead agency was faced with  
24 an existing runway, or an existing deforested or  
25 degraded habitat. Anyway, I'm going to move on

1 from this.

2 We are greatly troubled by the PMPD's  
3 treatment of, and essentially dismissal of, the  
4 TMDL program. If the Committee's view is correct  
5 on the TMDL program, then the TMDL program is the  
6 biggest waste of time and money ever. And I  
7 really think that that's not a message that the  
8 State of California, one agency within the State  
9 of California, with responsibility for protection  
10 of the environment, as well as, you know,  
11 electricity and other energy resources, wants to  
12 send to the public.

13 The TMDL implementation process is only  
14 just begun. The Committee points out, the  
15 Committee states in the PMPD that the regional  
16 boards are not required to pay for implementation  
17 of the TMDLs. Well, that's, strictly speaking,  
18 true. But, TMDLs are supposed to be implemented  
19 at first voluntarily by the dischargers; and then  
20 subsequently through enforcement actions.

21 And I believe we just simply can't  
22 predict that the entire system will not work  
23 unless there are dischargers, the major  
24 dischargers, who would come and pay for everything  
25 in one fell swoop. There are, I don't know, at

1 the last count, over 400 TMDLs in the State of  
2 California. And I don't think that they're all  
3 going to be -- I don't think none of them are  
4 going to be implemented because there's maybe two  
5 or five projects like this one where the Dukes of  
6 this world will come and pay for it.

7 So I think, as a matter of law, the  
8 Committee can't assume that TMDLs will not be  
9 implemented. And therefore, Duke's HEP will be  
10 required. In fact, I think the Committee's  
11 required to assume the opposite. I think, by law,  
12 the Committee is required to assume that TMDL  
13 programs will achieve their goal. And you can be  
14 sure that the environmental community will be up  
15 in arms if the opposite is proven to be true.

16 This is a hot topic, but I don't think  
17 the law really allows the Committee to make that  
18 conclusion.

19 I don't want to take much time on the  
20 short-term impact issue; it's been talked a lot  
21 about. I did find a couple of statements by Mr.  
22 Ellison interesting and revealing and I would like  
23 to point them out.

24 Mr. Ellison didn't infer, he in fact  
25 stated affirmatively that these spawning events

1 are, quote, "random." Well, I agree that we don't  
2 and we can't -- we're not smart enough right now  
3 to predict them, but I don't think we can say  
4 they're random. Not only that, there's another  
5 very subtle assumption that in another argument he  
6 made which is that, well, even if there are  
7 temporary large impacts because we happen to take  
8 out large volumes of water during the spawning  
9 events, that over time it would just balance out.

10 Well, if we don't know a whole lot about  
11 these spawning events, then we can't predict that  
12 there will be this balancing out, either. We  
13 really, we can't have it both ways. On the one  
14 hand we say, well, we don't know when the spawning  
15 events happen, or other reproductive cycles that  
16 coincide with water intake. And on the other hand  
17 say, well, whenever they occur, over time things  
18 will average out. Without taking into account  
19 either the timing of the spawning events or the  
20 schedule for the plant. So, either way, I think  
21 you can't make that assumption.

22 HEARING OFFICER FAY: Can you wrap up?  
23 You're just about at the end of your 45 minutes.

24 MR. NAFICY: I will wrap up. I do have  
25 a few other things, but I understand that we had

1 some discussions back and forth.

2 I'll conclude with the following. This  
3 is actually a comment that the City made about the  
4 City's zoning. I understand why the City wants to  
5 be very protective of its zoning rights and all  
6 that. On page 25 of our brief we suggest it was  
7 not that the City can deny a request by Duke, were  
8 it to make an application for a zoning change, but  
9 simply that if that application is denied then  
10 Duke would have an opportunity to make a case with  
11 the California Coastal Commission, who I think we  
12 all know where they'll come on this issue.

13 So that essentially, I think, eliminates  
14 the issue of the zoning, the industrial coastal,  
15 the pending zoning issue, because the California  
16 Coastal Commission has the authority, as they've  
17 stated in their report, to override a refusal by  
18 the City to change the zoning.

19 I do appreciate your letting me go a  
20 little bit over, and if there are any questions,  
21 by all means I'd be happy to answer them.

22 HEARING OFFICER FAY: Thank you, Mr.  
23 Naficy. Okay.

24 Let's move on to Ms. Dunton, then. Mr.  
25 Naficy, can you make room at one of the

1 microphones? Okay, that's fine, as long as you're  
2 comfortable.

3 MS. DUNTON: Good afternoon,  
4 Commissioners. I will just be commenting on the  
5 cultural resource issues. And the only comments I  
6 had concerning the other parties was on the  
7 applicant, Duke Energy, their comments on the  
8 PMPD.

9 And they concern the wording, they would  
10 like the wording from ground disturbance -- let me  
11 see what page -- if you have the comments, it  
12 starts on page 10 and 11. And they would like the  
13 wording ground disturbance changed to native soil  
14 ground disturbance.

15 And as I testified previously that I  
16 believe that all soils need to be monitored. And  
17 also I'd like Duke to clarify the meaning, what  
18 they perceive the meaning of native soils to be.

19 MR. ELLISON: I apologize, but I'm not  
20 the person to do that.

21 MS. DUNTON: Oh, okay.

22 MR. ELLISON: Perhaps we can include it  
23 in written comments that we will be filing in two  
24 weeks, but as a nontechnical response, my  
25 understanding is that there's a layer of soil at

1 the site that has previously been disturbed; in  
2 fact, brought in, that sort of thing. That's the  
3 non-native soil. Underneath that is soil that has  
4 not previously been disturbed. And I think that's  
5 what's meant by the native soil. But that's not  
6 the technical explanation; that's just my  
7 understanding.

8 HEARING OFFICER FAY: Ms. Dunton, just  
9 so you know the Committee's concern here, as you  
10 know, we included all the soil --

11 MS. DUNTON: Yes, and I agreed with --

12 HEARING OFFICER FAY: -- as subject to  
13 monitoring. I know you do.

14 MS. DUNTON: Yes.

15 HEARING OFFICER FAY: Duke responded  
16 that virtually all value for cultural resources is  
17 lost if the resources are out of context. And  
18 clearly the historic and prehistoric resources in  
19 fill are out of context; they've been moved.

20 The Committee's concern is that they may  
21 have been moved from very close by where there  
22 were cultural resources. And so even though they  
23 would have lost their contextual value, there may  
24 still be discoverable resources that are out of  
25 context but still have some value because of the

1 richness of that area, and the likelihood that the  
2 fill was taken from that area.

3 So that's our concern. And we just have  
4 to consider this --

5 MS. DUNTON: Yeah, that's exactly the  
6 same concern that I have, is that even though it's  
7 been previously disturbed and the high, you know,  
8 cultural resources in the area and the history of  
9 the area. Yeah, that's the only concern I really  
10 have is that even though it has been previously  
11 disturbed, it should be monitored.

12 And that's the only thing I had.

13 HEARING OFFICER FAY: Okay, let me ask  
14 you a question. The staff, I think, voiced  
15 concerns for recordation of resources discovered  
16 by photograph, that sort of thing. Is your  
17 objection to that regarding human remains  
18 basically a spiritual one, and that is consistent  
19 with --

20 MS. DUNTON: You're talking about the  
21 photographs, photos?

22 HEARING OFFICER FAY: Yes.

23 MS. DUNTON: Yes.

24 HEARING OFFICER FAY: Okay. And this is  
25 consistent with the position that the Salinan



1 people have taken in other situations?

2 MS. DUNTON: Yes.

3 HEARING OFFICER FAY: All right.

4 MS. DUNTON: And that's all I had.

5 HEARING OFFICER FAY: Okay.

6 MS. DUNTON: Thank you.

7 HEARING OFFICER FAY: Thank you very  
8 much.

9 Well, Mr. Ellison, we owe you ten  
10 minutes of rebuttal. So why don't we go to that,  
11 if you're prepared, before we hear from others.  
12 Well, actually, we do have agencies to call on, if  
13 you'd like to wait until --

14 MR. ELLISON: Whatever your pleasure.

15 HEARING OFFICER FAY: The Chairman would  
16 like to do that. Let's wait. He's in charge.

17 Is anybody here from the Coastal  
18 Commission? The Coastal Commission did file  
19 comments, and they don't need to repeat their  
20 comments, nor does anybody else have to repeat the  
21 written comments they filed.

22 Are there any other agencies that wish  
23 to address the Committee? Ms. Johnston on behalf  
24 of Fish and Game.

25 MS. JOHNSTON: Good afternoon,

1 Commissioners. My name is Deborah Johnston  
2 representing the Department of Fish and Game.

3 This has been a long process and we  
4 really appreciate all the work and effort you and  
5 your staff have put into the process.

6 We are concerned about the final  
7 decision that you have recommended. The final  
8 staff assessment found -- the CEC Staff found that  
9 there was a significant loss of entrained  
10 organisms and that alternative cooling was  
11 preferred mitigation for this loss. The  
12 Department still supports this conclusion.

13 Duke is following the same process as  
14 Moss Landing Power Plant and is recommending that  
15 the HEP be the mitigation for this process. We  
16 have found, when looking at the HEP, one of your  
17 conclusions was that without this money none of  
18 these will go forward. In fact, one of the  
19 proposed projects has indeed already been funded,  
20 the Holister Ranch. And if you look at other  
21 fundings, such as prop 40, EPA 319 grants, Coastal  
22 Conservancy, our Wildlife Conservation Board,  
23 moneys are available. So Duke's money is not a  
24 limiting factor for these processes to come  
25 through the Regional Board TMDL process.

1           In addition, the HEP projects are  
2           potentially to provide for up to 400 years of  
3           reduced sediment. But they also indicate you  
4           probably won't see any of this until 50 years have  
5           gone by. A long time after the plant ceased its  
6           operation.

7           Some of the project propose replenishing  
8           eel grass habitat. Eel grass is gone from a  
9           historic low of 50 acres in 1997 to more than 200  
10          acres in 2001. It's real close to the maximum  
11          approach of 300 acres that we had in 1960. So we  
12          don't see the HEP, by itself, is providing  
13          mitigation for the entrainment.

14          The Department recommends the mitigation  
15          proposed by the CEC Staff for terrestrial impacts  
16          be fully implemented to reduce impacts to the  
17          Morro shoulder-band snail, especially in light of  
18          the fact that protocol surveys were not conducted  
19          in all cases.

20          The Department continues to recommend  
21          that the bridge not be constructed due to  
22          unmitigated impacts, including noise vibration to  
23          species that utilize Morro Creek, which is  
24          designated as critical habitat for the steelhead  
25          trout.

1           Hazardous materials and construction  
2       workers will not be transported along this route  
3       but will use an alternative entrance, which is in  
4       your decision on page 494/495. This entrance can  
5       also be used for all construction. And, in  
6       addition, you stated in your decision that this  
7       will comply with all LORS. In fact, it will not  
8       be in compliance with the Department's LORS, in  
9       specific, section 5650.

10           As early as 1970 there was no read in  
11       this location. We recommend that the area should  
12       not be hardscaped. It leads to the collapse of  
13       sand dunes and reduces or eliminates sand  
14       migration.

15           Impacts to aquatic organisms result from  
16       entrainment, impingement and thermal shock.  
17       Studies conducted by PG&E at Moss Landing found  
18       that 95 to 99 percent of the entrained organisms  
19       do not survive. Studies by PG&E at Diablo found  
20       95 percent to 97 percent do not survive. Using  
21       100 percent mortality is pretty real; it's not  
22       that conservative an estimate.

23           While all fish species do not have  
24       entrainable larvae, those that don't have  
25       entrainable larvae, they're impinged. We do find

1       them impinged. So, all species are impacted by  
2       once-through cooling.

3               In the 316 report, staghorn sculpin are  
4       susceptible to entrainment from 15 to 25 days.  
5       This represented 4 percent of the entrained  
6       species. Goby larvae are susceptible four to 20  
7       days. This represented 75 percent. Circulation  
8       tidal flushing in the back Bay is documented at 15  
9       days. So therefore using the maximum exposure for  
10      calculation mortality is not unreasonable and  
11      provides a more realistic picture.

12             The Department recommends the proportion  
13      mortality that is recommended by the staff and the  
14      Regional Board of 31 percent be used instead of  
15      the 16.2 percent recommended.

16             Reducing the impingement flow rate from  
17      .5 feet per second to .3 feet per second. You  
18      have described that as reducing impingement  
19      impacts. In fact, anchovies comprise 74 percent  
20      of the impinged species. They swim, according to  
21      Dr. Steve Webster, at 2 meters per second. This  
22      change will not make any change in impingement for  
23      anchovies.

24             The Department concurs with the CEC  
25      conclusion that the power plant is having

1 significant impacts on the estuarine ecosystem.

2 And also that BTA for the plant is closed cycle  
3 cooling. And we continue to recommend that this  
4 type of system be recommended.

5 In conclusion, cooling towers do not  
6 entrain organisms; they do not have thermal  
7 discharges; they do not physically damage aquatic  
8 species; and cumulative impacts to declining fish  
9 stocks do not exist.

10 The Department recommends that you  
11 reconsider your decision to authorize once-through  
12 cooling for the Morro Bay Power Plant.

13 Thank you.

14 HEARING OFFICER FAY: Thank you, Ms.  
15 Johnston.

16 Any other agencies that wish to address  
17 the Commission? Okay. Mr. Thomas, can we ask you  
18 to come up. We'd like to get your reaction to the  
19 comments about the TMDL, since your testimony was  
20 a large part of the basis for the Committee's  
21 proposed decision on that matter.

22 MR. THOMAS: Sure. Thank you. Michael  
23 Thomas with the Regional Water Board.

24 The Board is required to implement  
25 TMDLs, as was stated. So I think the reality of

1 the situation is that n this case it will cost  
2 tens of millions of dollars to implement this  
3 TMDL.

4 And the likelihood that individual  
5 landowners are going to come up with that kind of  
6 money to do it is not likely.

7 So, it will be a tiered process, as is  
8 pointed out in CAPE's testimony. It will be a  
9 voluntary, followed by encouraged compliance if  
10 necessary, and then enforcement if that becomes  
11 necessary.

12 But I think it's important to realize  
13 that the California Water Code has the word  
14 reasonable in it hundreds of times. The initial  
15 section of the water code says that the regional  
16 board will consider all factors involved,  
17 economic, social, tangible and intangible.

18 And I think it's unlikely that the  
19 Board -- well, I think that the Board will have to  
20 take into consideration the cost that is involved  
21 here when they consider enforcement action if it's  
22 necessary. They may not be as willing to take  
23 enforcement action if someone has difficulty  
24 complying with something that costs in the \$10  
25 million range.

1           So, in order for us to actually deal  
2       with this problem, we are going to have to  
3       generate very large sums of money, in the \$10  
4       million range, and I think it's highly unlikely  
5       that that work will get done unless we come up  
6       with those funds.

7           Now, people have mentioned that there  
8       are funding sources available, and that's true,  
9       there are sources available. But they are spread  
10      out over the entire state. And what this amounts  
11      to, in practice, is grants being awarded in the  
12      \$50,000, \$100,000, \$200,000 range, for the most  
13      part. And that's not going to solve the problem  
14      in this case, or in many watersheds. Large sums  
15      of money are going to be needed, and are needed  
16      here.

17          So, I think that that's a more realistic  
18      view of the situation.

19          HEARING OFFICER FAY: Within the  
20      watershed of the Morro Bay Estuary, do you have a  
21      sense of how many, if I can say, high value  
22      projects like the proposed project that is capable  
23      of generating very large sums of income, exist  
24      within that watershed, and therefore might be  
25      available as a source of funds for the TMDL



1 projects?

2 MR. THOMAS: None on this scale.

3 HEARING OFFICER FAY: None?

4 MR. THOMAS: None.

5 HEARING OFFICER FAY: And if this  
6 project does not go forward, Duke has testified  
7 that the old plant can be made to continue  
8 operating. So, that source of funds for a TMDL  
9 would not be available, even though many of the  
10 impacts would continue, is that correct?

11 MR. THOMAS: Well, when the Board renews  
12 the existing permit for the existing power plant,  
13 the Board can consider mitigation for the impacts  
14 that would be caused by the existing power plant.  
15 There could be a habitat enhancement plan  
16 associated with that permit. I'm sure it would be  
17 based on the cooling water flow of the existing  
18 plant, the likely actual flow of the existing  
19 plant.

20 HEARING OFFICER FAY: Okay. If you  
21 could bear with me just a moment, make sure I have  
22 reviewed all my questions that I had with you.

23 (Pause.)

24 HEARING OFFICER FAY: Staff recommends  
25 that if the Committee takes the approach that it

1 did in the proposed decision, that at the very  
2 least identify or show a preference that the HEP  
3 money be used for projects that are not likely to  
4 otherwise take place, but for this power plant  
5 project.

6 Is that a realistic recommendation? Is  
7 this something that the Water Board could  
8 prioritize? That is, target any moneys from a  
9 Duke-generated HEP fund to go towards projects  
10 that are not likely to occur, but for this source  
11 of money?

12 MR. THOMAS: The Board could do that,  
13 yes. Staff could make that recommendation. It  
14 would be up to the Board to decide --

15 HEARING OFFICER FAY: So there is a  
16 sense of, if I may, some projects or remediations  
17 that would be directly linked to a serious  
18 violation, for instance? And that therefore the  
19 violator would likely be charged for the cost of  
20 the project, is that correct?

21 MR. THOMAS: I'm not following you.

22 HEARING OFFICER FAY: Well, I'm just  
23 trying to -- if there's a scale. You mentioned  
24 earlier when we were discussing that there was  
25 sort of a three-tiered approach, desirable, you

1 know, some necessity, and then urgent in terms of  
2 projects.

3 How would, if you were going to  
4 prioritize a recommendation for the money from the  
5 Duke project, where would you recommend the Water  
6 Board place that priority?

7 MR. THOMAS: I would prioritize it on  
8 the projects that would give you the biggest bang  
9 for the buck, that would reduce sedimentation by  
10 the greatest amount.

11 HEARING OFFICER FAY: Regardless of  
12 whether there was a chance of getting funding for  
13 that project from another source?

14 MR. THOMAS: I think I would use the  
15 funding that might be available from this project  
16 to try and generate more funding from other  
17 sources. I would use it as a match.

18 HEARING OFFICER FAY: Um-hum, okay.

19 MR. THOMAS: I would not piece it out  
20 like that. I wouldn't say I might get funds for  
21 this project, therefore I won't use these moneys.  
22 I would look at it differently. I would use these  
23 funds as a match.

24 HEARING OFFICER FAY: So your priority  
25 is to reduce sedimentation at the earliest

1 possible time by the greatest amount rather than  
2 assessing the blame and charging off --

3 MR. THOMAS: Exactly.

4 HEARING OFFICER FAY: -- whoever could  
5 be found?

6 MR. THOMAS: Yes.

7 HEARING OFFICER FAY: Okay. All right.

8 And then I guess the other question was the one we  
9 discussed and that was raised in CAPE's petition.  
10 And that is your plans for some reaction about the  
11 apparent discrepancy between the Phillips-Williams  
12 report and the TetraTech report?

13 MR. THOMAS: Yes. I'm working on a  
14 letter now, and I hope to have that to the  
15 Commission by the deadline, the two-week deadline.

16 HEARING OFFICER FAY: Okay. Could you  
17 be in touch with Ms. Holmes as to the way  
18 information is being generated there? Because I  
19 think the staff is interested in having your input  
20 before they file their comments.

21 MR. THOMAS: Sure, I'll be happy to.

22 HEARING OFFICER FAY: Okay, great.

23 Thank you very much.

24 MR. THOMAS: Okay, one other thing I  
25 just want to mention is that earlier there was a

1 discussion about volume, how much water the power  
2 plant has used in the past, whether the  
3 information is monthly or daily.

4 And the data that we have, as it was  
5 reported to us by Duke Energy and PG&E, is we have  
6 maximum daily, minimum daily and average daily.  
7 So the evidence that you have in the record, I  
8 believe is the evidence that I sent to staff,  
9 which was based on daily averages. I did not  
10 include daily maximum and daily minimum.

11 HEARING OFFICER FAY: Okay, thank you.

12 Okay, any other agencies who would like  
13 to comment before we hear from Mr. Ellison?

14 Mr. Ellison.

15 MR. ELLISON: Thank you, Mr. Fay. Just  
16 two points. The first with regard to this issue  
17 of the sentry wells for the City.

18 Duke's concern here is, you know, we  
19 understand what the City said, that it might be  
20 useful to have more information about MTBE and --  
21 can you hear me?

22 HEARING OFFICER FAY: Not very well.

23 MR. ELLISON: Is this better?

24 HEARING OFFICER FAY: Yes, thank you.

25 MR. ELLISON: Two points. I want to

1 discuss just momentarily the sentry wells issue,  
2 and then I want to talk about this issue of the  
3 short-term seasonal impacts.

4 What you heard from Mr. Elie was the  
5 City was interested in having these sentry wells  
6 to provide additional information regarding the  
7 migration of the MTBE.

8 Duke's concern about that is that it is  
9 not the responsible party for the MTBE  
10 contamination. The City has a remedy if it wants  
11 more of that kind of monitoring, we think that it  
12 ought to seek that from the parties that are  
13 responsible for the contamination in the first  
14 place. And we don't know of any reason that the  
15 City can't do that. So I think that's sort of  
16 fundamentally the question.

17 Let me turn now to this issue of  
18 seasonality, spawning and that sort of thing. I  
19 want to make three points. The first is Mr.  
20 Naficy suggested -- I hope I'm pronouncing your  
21 name correctly. Have I been mispronouncing it  
22 this entire proceeding? If I have, I apologize.  
23 What's the correct pronunciation?

24 MR. NAFICY: Naficy.

25 MR. ELLISON: Naficy. Mr. Naficy

1 suggested that there's no information in the  
2 record about these spawning events, and that's not  
3 true at all. We've done extensive surveys as part  
4 of the 316B studies of larvae in the estuary,  
5 throughout the estuary, over a considerable period  
6 of time. And that has generated a considerable  
7 amount of information about larval densities; and  
8 on a week-by-week basis, I believe, if my memory  
9 serves, over a long period of time; and at a  
10 variety of locations in the estuary.

11 What that shows is that there is  
12 significant larvae present throughout the year in  
13 every one of the weeks. There was no situation in  
14 which people went out and didn't find anything.  
15 But there was some variation in the densities from  
16 one week to the next.

17 Now what I mean when I said that it's  
18 random was not that there was some concentrated  
19 period of time that moved around within the year,  
20 and that the rest of the time there weren't larvae  
21 in the estuary. What I meant by that is it jumps  
22 around week to week.

23 But in every single week there was  
24 significant amounts of larvae found. And there  
25 was no pattern that you could see. And you can

1 look, this is in the record in the 316B studies.  
2 You'll see that there's no pattern that's  
3 discernible with regard to these spawning events,  
4 which makes sense because you've got different  
5 species spawning. They spawn at different times,  
6 et cetera, et cetera.

7 So the point is there's not any time  
8 during the year, based on these studies, that's  
9 more important than in some other time during the  
10 year with respect to entrainment.

11 And the other two points I want to make  
12 are first I want to emphasize again that staff's  
13 new evidence, we believe, greatly exaggerates the  
14 likely frequency of the times where the new plant  
15 might be using more cooling water than the  
16 existing plant. But it is true that that's a  
17 possibility; we're speculating here, but that is a  
18 possibility that that could happen.

19 The reason concern we have, though, is  
20 my third point, which is this. What staff seeks  
21 to do is to count, in this short-term analysis, to  
22 count as impacts only those entrainment that  
23 occurs during those speculative times when the  
24 existing plant would be consuming less than the  
25 new plant.



1           And to not count the entrainment that  
2 occurs in all the other times. In other words,  
3 this is as if you have a bank account and what the  
4 staff is essentially saying is that we're going to  
5 measure the impact of money in the bank account by  
6 counting the deposits, but not counting the  
7 withdrawals.

8           As long as it's true that there's no  
9 time that's more important than any other time,  
10 and no species that's more important than any  
11 other species, and given the data that's in the  
12 record, there's absolutely no basis for doing  
13 that.

14           You have to count, if you're going to  
15 count the impact, if you will, that the project at  
16 one point in time is entraining less -- I'm sorry,  
17 is entraining more than would have otherwise been  
18 the case.

19           You have to also count those times when  
20 it's entraining less, and net the two to  
21 understand how much money you have in your  
22 account; or what is the overall impact on larvae  
23 in the estuary. That's the point.

24           And staff doesn't do that with this  
25 analysis. And the reason the staff doesn't do

1       that with this analysis is because we know what  
2       the answer is when you net this, because of the  
3       permit limitation. The 370 mgd guarantees that  
4       over the course of a year the new plant will  
5       consume less water and therefore entrain less than  
6       the existing plant. That's the point.

7               This issue about seasonality, there is  
8       no basis for selectively counting some entrainment  
9       but not other entrainment.

10              That's all I have to say. Thank you.

11              HEARING OFFICER FAY: Thank you. We  
12       have a few people that we definitely want to hear  
13       from --

14              MR. NAFICY: Excuse me, Mr. Fay.

15              HEARING OFFICER FAY: Yes, sir.

16              MR. ELIE: May I address what Mr.  
17       Ellison just said, since I only used about five  
18       minutes of my 45?

19              HEARING OFFICER FAY: Sure, certainly.

20              MR. ELIE: I just wanted to be clear in  
21       the Committee's mind, the City was not emphasizing  
22       the MTBE; that was a secondary benefit of the  
23       sentry wells. The main benefit is measuring the  
24       drawdown, which is what soil and water 10  
25       initially provides.

1           The MTBE, if you noticed in the  
2           condition the Committee has written thus far,  
3           talks about the MTBE, but the main thrust of the  
4           sentry wells is dealing with the aquifer test to  
5           determine the effects of increased pumping on the  
6           City's wells.

7           I just wanted to point that out and make  
8           sure it was clear in the Committee's mind that the  
9           City's focus is on the drawdown and the quality in  
10          the City's wells. And then the secondary benefit  
11          would be the MTBE issue.

12          HEARING OFFICER FAY: Okay.

13          MR. ELIE: Thank you.

14          HEARING OFFICER FAY: Thank you for  
15          clarifying that.

16          We have -- I'm sorry?

17          MR. NAFICY: I'm sorry, before we move  
18          on, because I may have to leave soon, can we find  
19          out when the transcript will become available and  
20          set the final time we have to file from that  
21          point? However many days you think is  
22          appropriate, but get some indication of when the  
23          transcript will be available?

24          HEARING OFFICER FAY: If you think  
25          that's important we'll have to extend the

1 deadline. My experience lately is that the  
2 transcript probably won't be available for two  
3 weeks.

4 MR. NAFICY: Well, I'm just concerned  
5 that, you know, a lot of issues came up and, you  
6 know, I've been trying to take good notes, but if  
7 we are going to comprehensively deal with all the  
8 issues that were discussed, many of whom were not  
9 quite discussed in this way before, unless there's  
10 some urgency I would suggest that we allow  
11 transcripts to become available to make a better  
12 record.

13 HEARING OFFICER FAY: Okay, let's go off  
14 the record.

15 (Off the record.)

16 HEARING OFFICER FAY: I think in light  
17 of the timeframe we have and the concern expressed  
18 by CAPE, it's reasonable to extend the deadline on  
19 your follow-up comments by one week. So instead  
20 of two weeks, we'll make it three weeks, with  
21 comments due on July 21st by close of business at  
22 the Commission. And please serve that  
23 electronically on all the other parties.

24 All right. I'd like to move on and take  
25 the comments of some people --

1 MS. HOLMES: I believe staff reserved  
2 time for rebuttal.

3 HEARING OFFICER FAY: Oh, you did  
4 reserve time. Okay. I didn't --

5 MS. HOLMES: Can I use it?

6 HEARING OFFICER FAY: Yes, you may.

7 MS. HOLMES: Thank you. Very briefly.  
8 I wanted to make a couple of comments having to do  
9 with the issue of short-term impacts.

10 In the first place, I must take issue  
11 with the applicant's characterization of the  
12 staff's comments as containing new evidence.  
13 That's a gross exaggeration. We looked at the  
14 monthly numbers that are in the exhibit, and we  
15 took the capacity factor that is provided by the  
16 applicant. And we multiplied it by 80 percent, 90  
17 percent and 100 percent. And that's the sum of  
18 the information that you see in the text on the  
19 PMPD comments.

20 More fundamentally, the point that  
21 staff's trying to make with this point is that if  
22 the Committee wants to use a numeric baseline for  
23 short-term impacts it has to pick a period of  
24 time. That might be a week; it might be two  
25 weeks; it might be a month.

1           What we have evidence for in the record  
2       is monthly data. We have monthly water use data.  
3       Whichever period of time the Committee picks,  
4       staff recommends that it be a period of time that  
5       has some correlation to the time period during  
6       which short-term impacts are going to occur.

7           If that period of time is the month that  
8       the information that you need to use to compare  
9       future operation to the baseline is the  
10      information that's contained in exhibit 187. And  
11      we believe that when you do that, you look at  
12      reasonable assumptions about how the future plant  
13      might operate, you end up with increases in water  
14      use compared to the data in 187.

15          If the Committee wishes to use a  
16      different period of time for a short-term  
17      baseline, then it needs to obtain evidence about  
18      what that -- at least to identify the shorter  
19      period of time, and it needs to get the historical  
20      water use for that period of time in order to  
21      conduct the comparison of future water use to the  
22      baseline.

23          And finally, staff has to disagree with  
24      the applicant's contention that the short-term  
25      impacts don't matter. To make that assumption you

1 have to assume that spawning is constant, that  
2 larval presence is all constant, and that it's  
3 acceptable to increase destruction of the larvae  
4 of some species during some months because you  
5 might reduce the destruction of other species  
6 during other months. And staff thinks that's  
7 simply an untenable position.

8 Thank you.

9 HEARING OFFICER FAY: Okay, thank you.

10 All right, anything further from the parties then  
11 before we take our comments?

12 Good. Albert Huang needs to leave by  
13 5:00.

14 MR. HUANG: I appreciate taking the time  
15 to -- I'm speaking on behalf of the co-signees to  
16 a letter from June 13, 2003, that was submitted  
17 for comments. Represents over 20 environmental  
18 and environmental justice groups around the state.

19 From a policy perspective, I mean I've  
20 been watching what's going on here today, and I  
21 think the groups that signed this letter and  
22 decide to make some input into this, we understand  
23 that these cases are done on a case-by-case basis,  
24 and officially there's no precedential value to  
25 them.

1           But we are witnessing a disturbing trend  
2           in the whole CEC licensing process that is  
3           sending, we think, the wrong message to California  
4           citizens by putting coastal resources of our  
5           communities at risk.

6           As Lt. Governor Cruz Bustamante  
7           accurately portrayed in his recent letter dated  
8           June 26, 2003, which is available, I think, up  
9           front, we're allowing corporate interests of out-  
10          of-state companies, such as Duke, to use  
11          inefficient and outdated technology, such as once-  
12          through cooling to make a profit at the expense of  
13          the environment and our state's economy.

14          And there's clearly other feasible  
15          alternatives out there that would eliminate these  
16          impacts, but we're allowing them to continue to do  
17          this.

18          And what we're seeing is a process where  
19          the applicant gets what the applicant wants. And  
20          we believe this is setting a dangerous precedent  
21          that environmental groups throughout the state are  
22          becoming very aware of. And there's going to be a  
23          number of other plants coming up through this same  
24          process, and we're in fear that this may set the  
25          precedent of how things are going to be done in



1 the permitting process.

2 And in our opinion this flies in the  
3 face of a mountain of scientific evidence and  
4 technical evidence and the analysis of the  
5 feasibility of alternatives.

6 For example, the intervenors in this  
7 case have done an excellent job of creating a  
8 large record; I mean you've had resource agencies  
9 weighing in, California Coastal Commission, Fish  
10 and Wildlife, NOAA. You had your CEC Staff  
11 assessment. But then we see what's going on right  
12 now, and we're talking about oh, there should be  
13 no impact, there is impact, there's no impact. I  
14 mean there clearly is going to be impact. And  
15 there is an alternative out there that addresses  
16 that issue and no one's talking about that because  
17 we're saying is infeasible economically and/or  
18 that there is site issues, as Bill Powers  
19 addressed earlier.

20 There's a growing consensus statewide  
21 among these groups that dry cooling is the way to  
22 go. I mean, first we wouldn't be having this  
23 discussion if we did use dry cooling technology  
24 because plants wouldn't have to be sited in our  
25 valuable coastal areas in the first place.

1           Second of all, they could be sited away  
2     from large populations and the concentrated  
3     populations of peoples, which is an environmental  
4     justice concern to many of the groups that are in  
5     the state working on these issues.

6           So, I mean, I can sum up right now by --  
7     I don't want to take up too much more of this  
8     Committee's time, but the spirit and the purpose  
9     of our environmental laws, we believe, are not  
10    being observed. And this PMPD, we strongly  
11    encourage, as the Lt. Governor has, and he's  
12    recognized the same issues that we're raising,  
13    strongly urge you to reconsider the PMPD and to  
14    look at this mountain of evidence, and make the  
15    right decision.

16           Thank you.

17           HEARING OFFICER FAY: Thank you. And we  
18    do have your letter.

19           PRESIDING MEMBER KEESE: Thank you for  
20    your comments. I believe this is the first time  
21    you've appeared here before us. The Committee is  
22    facing some of the choices you've said that you  
23    mentioned. But it's not that dry cooling is  
24    efficient. Dry cooling is inefficient. Wet  
25    cooling is efficient. That's something that has

1 to be weighed.

2 Does it result in lower costs of  
3 electricity for the citizens of California?  
4 That's something that has to be weighed.

5 This community is divided. Some of this  
6 community asks for dry cooling; some of this  
7 community is absolutely, categorically opposed to  
8 dry cooling. The City is opposed to dry cooling.  
9 But there are advocates for dry cooling.

10 The weighting here that we are forced to  
11 do is not just, cannot be just based on one issue  
12 and one way of looking at one issue. It's a much  
13 more complex equation than that. And, you know, I  
14 don't know, somebody will have to tell me if I've  
15 been on this case more than four years, but this  
16 has been a very long, tedious process. And it's  
17 been -- the parties you've heard today, and the  
18 public, who have had a tremendous impact on this.  
19 And you will hear members of the public taking  
20 views that differ from yours before this hearing's  
21 over.

22 COMMISSIONER BOYD: A comment, if I  
23 might. I don't want to get into specifics of this  
24 case; we're here to hear this case. But I  
25 appreciate your testimony and I encourage more

1 people younger than I to get involved in  
2 environmental efforts in the state to protect the  
3 state, as some of us have for 40 years of my  
4 career.

5 But you said something very critical at  
6 the beginning, and that is we deal with these  
7 things on a case-by-case basis. But then you also  
8 extrapolated into concerns about a trend that's  
9 occurring from since we deal with things, I think  
10 correctly, on a case-by-case basis, and I think  
11 it's an error to extrapolate anything you're  
12 hearing here today regarding this specific case  
13 and the type of cooling that is being considered  
14 as being a trend on the part of the Commissioners  
15 and the Commission with regard to any other plants  
16 in the state.

17 There are lots of considerations here  
18 with regard to the local area. I won't get into  
19 my career, but I've been in Fish and Game, I've  
20 been in water, I've been in air, and I take very  
21 seriously what it is I have to do in making these  
22 decisions.

23 So, I hope you would also tell the  
24 members of your community that we do care about  
25 what we're trying to do here. And it is a very

1 tough job to balance all the issues. It gets very  
2 complicated with regard to where you put a power  
3 plant; where the transmission systems are; what  
4 the water situation is in the area; what the  
5 impacts upon the community; what the air quality  
6 impacts are, et cetera, et cetera.

7 So, simple extensions of the fact that  
8 there is a technology that should be used don't  
9 adequately take into account all the other matters  
10 that have to be considered. So I don't say this  
11 to discourage you or to comment on anything you've  
12 had to say. I just say, keep up the good work,  
13 but study real hard this system that we have to  
14 deal with in each and every case.

15 I again thank you for taking your time.

16 HEARING OFFICER FAY: Thank you,  
17 Commissioner. And I might add, just because the  
18 letter Mr. Huang referenced has a letterhead of so  
19 many environmental groups that they may want to  
20 consider approaching the Commission on a generic  
21 basis about this topic if it's important enough to  
22 them.

23 There are state policies regarding  
24 saving fresh water and potable water. Of course,  
25 that's not what's being saved in this case because

1       it's estuary water. But, there is a basis for  
2       concern about water use in California. And  
3       there's certainly a basis at the Energy Commission  
4       for concern about environmentally sensitive  
5       resources.

6               And you just may want to approach this  
7       from a generic point of view and get the  
8       Commission to consider, at a policy level, outside  
9       of an individual siting case, how much weight to  
10      put on dry cooling versus once-through cooling.

11             And that's the kind of thing that is  
12      really more sensible at the front end, rather than  
13      on a case-by-case basis. Just an idea. We can  
14      talk about this later, during the break.

15             UNIDENTIFIED SPEAKER: Just for the record,  
16      many of us have met with Commissioner Pernell on  
17      this issue before.

18             HEARING OFFICER FAY: Good, good. I do  
19      think, though, the process is to have a public  
20      airing of a policy, and to see if you can interest  
21      the Commission in actually adopting something like  
22      that. But obviously you've got to start  
23      somewhere. Sounds like you have.

24             And we have another speaker who needs to  
25      speak this afternoon, and that is Pam Soderbeck.

1 MS. SODERBECK: Thank you for allowing  
2 me to speak a little bit early. I no longer live  
3 in Morro Bay, but I do have a lot of friends and  
4 old neighbors who I still care about here. And I  
5 personally invested an enormous amount of time in  
6 the process as probably most of you recognized.

7 I was very cynical coming into the whole  
8 process, as a former lawyer. And as time went by  
9 and I put more and more into it, as did all the  
10 other parties, I became more hopeful that in fact  
11 the process, itself, had a lot of integrity.

12 I was wrong. That hope was totally  
13 dashed with the issuance of the PMPD. The  
14 approval of the project with only minute changes  
15 has been preordained all along. That's the only  
16 conclusion that I can come to.

17 I understand and respect Commissioner  
18 Boyd's comments that all these are done on a case-  
19 by-case basis, yet it's not really true when you  
20 look at the overall results that every application  
21 is ultimately approved, except I think maybe one  
22 or two historically, which is a pittance in  
23 comparison to the number of applications that are  
24 made.

25 The decision illustrates what I'm

1 saying, I think, through the travesty of its  
2 analysis. I was most interested in the specifics  
3 of air quality, but I also took a quick review of  
4 other sections that show the same thing is  
5 happening over and over.

6 Either the decision is trying to be very  
7 clever and put the trappings of logical analysis  
8 before the public in a lame attempt to justify the  
9 preordained decision, or the conclusions are just  
10 plain wrong, or the analysis was incredibly lazy.

11 I don't think you all are stupid, nor do I  
12 think you're lazy.

13 As most of you know, I don't know if I  
14 should say most of you, as many of you know, I  
15 have Alzheimers, and I have trouble remembering  
16 words. So I pulled out my thesaurus making sure I  
17 could get some of these words right that don't  
18 quickly come to the tip of my tongue any more.

19 And the category that fit what I saw in  
20 the decision is sophistry, specious reasoning,  
21 fallacy, illogical, irrational, unsound. There's  
22 an even wonderful Shakespeare quote about an  
23 argument that is a lame and impotent conclusion.  
24 I'd say most of the air section qualifies for  
25 that. And from everything I've heard about the



1 dry cooling versus wet cooling, I think that  
2 probably qualifies for that.

3 There's also another type of problem  
4 that's in the reasoning and the opinion that I saw  
5 where it begs the question, there is a fact which  
6 may be true, there's another fact that may be  
7 true. The two have nothing to do with each other.  
8 But a conclusion is drawn that really relates to  
9 neither one.

10 And I read CAPE's brief on air quality.  
11 I think there are numerous illustrations in there  
12 where that happens. There are places where it  
13 says, it says as though you took someone's  
14 testimony that I like liver and onions and someone  
15 else's testimony that says I like hot fudge  
16 sundaes. And you put them together and you come  
17 to the conclusion that liver and onions is good  
18 with hot fudge sundaes. You know, it really  
19 isn't.

20 There are a lot of apples and oranges  
21 comparisons in there. Just one example. In the  
22 modeling it cites that the Duke witness is  
23 confident that the model is conservative. Then it  
24 goes on to say the staff witness, and it cites  
25 testimony that the modeling may over-predict. But

1 it doesn't address that same staff witness'  
2 testimony in the transcript that says he's also  
3 seen it under-predicted on occasion. It's cherry  
4 picking.

5 And then it goes on that the increased  
6 levels of modeled particulate matter can't be  
7 picked up on the most sensitive monitors.  
8 Conclusion, no problem. Well, the monitoring and  
9 what can be picked up has nothing to do with  
10 either of the prior statements. Absolutely  
11 nothing. There's a total disconnect.

12 But that's supposed to convince the  
13 public under a CEQA analysis that this is  
14 perfectly safe and good. It's just an incredible  
15 disappointment.

16 I won't go into the other details. I've  
17 taken enough time to make the point. I think,  
18 without getting to whether air is really -- and I  
19 concede, air quality is not nearly as critical as  
20 a lot of these other substantive issues. Air  
21 quality doesn't mention the new standards that are  
22 in effect, just skips that all together. But set  
23 that aside.

24 It's the way in which the opinion is  
25 supposedly presented to the public, the analysis,

1 the facts, the connections that are made. I mean  
2 I'm demented and I can see they don't make sense.

3 (Laughter.)

4 MS. SODERBECK: And I don't mean to be  
5 facetious. I really do have Alzheimer's Disease.  
6 But I can still understand some basic reasoning.  
7 And I can understand that people are, you know,  
8 pulling the wool over my eyes, at least so far.

9 I really encourage some very thoughtful  
10 review of this preliminary decision by the entire  
11 Commission because things like that can't stand.  
12 And the sad thing is that they would make  
13 excellent appeal base, but to put up the fight to  
14 go to the supreme court on one of your decisions  
15 is pretty much, you know you're going to get what  
16 you say you're going to do without having to worry  
17 about appeal. And that's also very sad.

18 Thank you.

19 HEARING OFFICER FAY: Thank you. I  
20 assure you, we don't rely on that, whether it's  
21 true or not in terms of appeal, we don't rely on  
22 that. And I also note that we do have your  
23 remarks filed on air quality and public health.  
24 You covered many of those things and we have it to  
25 review.

1           What we want to do is take as many of  
2           the public comments before 5:00 as we can, and  
3           then take a break and start again at 7:00. So any  
4           of you who were interested in hearing what goes on  
5           this evening, or if you have some friends or  
6           neighbors who weren't able to attend this  
7           afternoon, let them know we will be back at 7:00.

8           Jack McCurdy.

9           MR. McCURDY: I'd prefer to speak this  
10          evening.

11          HEARING OFFICER FAY: I'm sorry?

12          MR. McCURDY: I'd prefer to speak --

13          HEARING OFFICER FAY: Okay. Nelson  
14          Sullivan.

15          MR. SULLIVAN: Me, also.

16          HEARING OFFICER FAY: Okay. John Stahl,  
17          Staw? Is that S-t-a-w?

18          MR. STAHL: H-l, Stahl.

19          HEARING OFFICER FAY: H-l, thank you.

20          MR. STAHL: My penmanship is poor,  
21          sorry. My name's John Stahl and I'm President of  
22          (inaudible) Energy Group. And with our partners,  
23          Global Renewable Energy Partners, we are proposing  
24          to construct a 120 megawatt wind power project in  
25          the Lompoc area adjacent to the Vandenberg Air

1 Force Base.

2 I'm here today to speak to you about the  
3 200 megawatt expansion of the project. We're not  
4 concerned with the placement of the base plant.

5 We recently applies to the California  
6 Independent System Operator for permission to tie  
7 our 120 megawatt wind power project into the PG&E  
8 system. They then conducted a systems impact  
9 study for the transmission issues.

10 We received the results of that study  
11 just this past Monday. The study found that if  
12 the Morro Bay expansion project is approved, the  
13 transmission capacity north of Morro Bay will be  
14 operating at or above capacity.

15 With the Morro Bay Plant expansion  
16 online the Lompoc wind power project could have to  
17 be built, this is according to the system impact  
18 study, quote, "reconductoring approximately 140  
19 circuit miles of 230 kV transmission line."  
20 Needless to say, this would financially kill our  
21 project.

22 The study went on to say that without  
23 the Morro Bay Plant expansion online the SIS  
24 states, quote, "the impact on the system would be  
25 minimal and reconductoring would not be

1       necessary."

2               We are working with Cal-ISO and PG&E to  
3       see if there are alternatives to reconductoring.  
4       One alternative that we thought would be available  
5       is re-rating the line capacity. And this is not  
6       available to us. It was one of the -- discussed  
7       in your decision as one of the methods by which  
8       the Morro Bay project could mitigate their  
9       impacts. According to Cal-ISO just this past  
10      week, discussions with us and with PG&E, that that  
11      alternative is not available to us and it's also  
12      not available any longer to the Morro Bay Plant.

13             So, I think the Morro Bay Plant is going  
14      to have to come up with some hard mitigation  
15      measures in terms of the transmission capacity,  
16      not just paper measures.

17             We realize this information only came up  
18      recently. We just got the report ourselves, last  
19      week. We do feel it raises some significant CEQA  
20      issues. And that your Commission may, in the  
21      future, have to decide whether or not to approve a  
22      fossil plant 200 megawatt expansion and thereby  
23      eliminate the potentials of wind projects down in  
24      the Santa Barbara County area.

25             We'd be glad to work with your

1 Commission Staff, applicant, PG&E to try and  
2 resolve these issues. Thank you.

3 HEARING OFFICER FAY: Commissioner.

4 PRESIDING MEMBER KEESE: Yes, I'd like  
5 to comment specifically on this issue.  
6 Commissioner Boyd and I are doing an integrated  
7 energy policy report to be presented to the  
8 Governor November 1st. It takes into  
9 consideration many issues.

10 And last week I think we heard about six  
11 hours of testimony in renewables program on  
12 transmission projects dealing with wind. In the  
13 Tehachapi area they're talking about 5000  
14 megawatts of potential sited, funded generation  
15 for which there are no transmission lines.

16 It's an acute problem. I recognize and  
17 understand, now that we know about your project,  
18 our staff should know about your problem. We're  
19 dealing on the side where we use state ratepayer  
20 money to incentivize wind projects. The  
21 Legislature has told us that we should start to  
22 move towards getting 20 percent of our generation  
23 out of renewable projects. And we have a  
24 transmission grid that will not accommodate that.

25 It is a major problem. I don't, on the

1 spur of the moment, see any way we're going to  
2 accommodate it in this case. But it is a very  
3 important issue to Commissioner Boyd, who chairs  
4 the IFER Committee, and myself. It's a very  
5 important issue to John Geesman, who chairs our  
6 Siting Committee, who's trying to come up with an  
7 innovative solution with the Public Utilities  
8 Commission on it. And it will be part of our  
9 integrated policy report.

10 So, maybe -- do you have an idea, do you  
11 have a name at the Commission -- you really, we  
12 would like to hear input to the Commission on this  
13 issue.

14 MR. STAHL: I'm just --

15 COMMISSIONER BOYD: Well, let me -- go  
16 ahead.

17 MR. STAHL: It just seems to me that  
18 there's a potential here for mitigation. Instead  
19 of having a fossil fuel plant using up all  
20 capacity that's existing going out of here, there  
21 should -- you know, we only operate 35 percent of  
22 the time or 33 percent of the time, for instance.  
23 Maybe there could be some sharing in the load  
24 until the system is rebuilt or something like  
25 that.



1           It seems to me that it shouldn't just be  
2 ignored. There's a major problem here that could  
3 possibly solve as a mitigation, some cooperation  
4 between the applicant and ourselves. Vandenberg  
5 is very interested in doing some wind power, so.

6           PRESIDING MEMBER KEESE: All the  
7 evidence on this case is in.

8           MR. STAHL: I think CEQA requires that  
9 if you haven't made a decision yet, to consider  
10 new information.

11          PRESIDING MEMBER KEESE: We will take it  
12 under advisement. Commissioner Boyd?

13          COMMISSIONER BOYD: Well, I was just  
14 going to say that on the way down here I saw for  
15 the first time Mr. Stahl's email to the  
16 Commission. And I'm sure it has found its way to  
17 certain members of staff.

18          But what Chairman Keese has indicated is  
19 certainly true. It's very difficult for us. I  
20 mean we work with the Legislature to get  
21 legislation that says we have 20 percent of our  
22 power from renewable sources by the year 2017.  
23 Subsequent to that, as Chairman Keese knows, we've  
24 worked with the PUC, the Power Authority and  
25 issued an energy action plan that said it's our

1       desire to reach that goal by 2010, not 2017.

2               So you know there's a commitment on the  
3       part of this Commission to expand and accelerate  
4       the use of renewable power.

5               The issue is as Chairman Keese  
6       unfortunately laid it out, that we have  
7       significant transmission system problems in the  
8       state. We have a very high priority project  
9       involving this Commission and the ISO and the PUC  
10      to try to address that. And I only hope that they  
11      can. I personally am very impatient with the  
12      ability of the system to respond in certain areas.  
13      I've only been a Commissioner a little under a  
14      year and a half, but the four years I spent as  
15      Deputy Secretary of Resources was some concern  
16      about energy. We tried to push this issue  
17      forward.

18              I guess everybody is trying to do the  
19      best they can. But we'll take this into  
20      consideration. As quite candidly, quite frankly,  
21      as Chairman Keese indicated, it's very difficult  
22      to solve this problem in the context of this one  
23      siting case.

24              But let us have the staff get back to  
25      you and see what we can do with regard to the

1 overall project and problem, and where you, you  
2 know, where you actually sit in our scheme of  
3 things. And certainly turn this over to  
4 Commissioner Geesman, who chairs also our  
5 Renewables Committee, on which I sit, too, to take  
6 into consideration as we try to push resolution of  
7 this problem forward.

8 MR. STAHL: I appreciate it very much.

9 COMMISSIONER BOYD: Thank you.

10 HEARING OFFICER FAY: Linda Merrill.

11 And, Ms. Merrill, as you come up I see what you  
12 wrote about your concerns. I just want to say  
13 before you start that the fact that Duke mentioned  
14 a letter from U.S. Fish and Wildlife Service has  
15 no bearing. And it's not to be -- it will not be  
16 considered as quote, "new evidence."

17 The way that the jurisdiction works here  
18 is that the Energy Commission has authority over  
19 siting power plants in the state. But does not  
20 preempt federal law. And so, if the Fish and  
21 Wildlife Service says something during the  
22 pendency of the case, it gets incorporated. If  
23 they say it after the Energy Commission decides a  
24 case, and it changes anything in the Energy  
25 Commission decision, it gets changed to the way

1 the U.S. Fish and Wildlife Service wants it,  
2 because that's federal law. And that is  
3 controlling.

4 So, that's the context for this.

5 MS. MERRILL: Thank you --

6 HEARING OFFICER FAY: I hope that helps  
7 a little bit.

8 MS. MERRILL: -- for that clarification.  
9 What I just wanted to say to you is I don't know  
10 what to say now because I felt that introducing  
11 this letter, which I, and as far as I can tell, no  
12 other agencies have seen the letter.

13 My comments were based upon wanting you  
14 to continue to ask Duke to provide the Atascadero.  
15 Here's a picture of the fencing and you can see  
16 there is extensive area for the plovers to nest in  
17 that area.

18 And I wanted you to continue to ask them  
19 to -- or require them, whatever you do, to  
20 protect, to help in protecting the endangered  
21 snowy plovers. And I don't know if my comments  
22 are just going to be wind now, because of the  
23 introduction of that letter or not.

24 But I just wanted you to understand that  
25 I didn't know, and nobody else in the room seems

1 to have a copy --

2 PRESIDING MEMBER KEESE: You're not  
3 inappropriate here.

4 MS. MERRILL: Okay.

5 PRESIDING MEMBER KEESE: We haven't seen  
6 the letter --

7 MS. MERRILL: Oh, well, --

8 PRESIDING MEMBER KEESE: -- and your  
9 comments certainly are --

10 MS. MERRILL: -- if they have it why  
11 doesn't everybody else have it?

12 PRESIDING MEMBER KEESE: Your comments  
13 are appropriate now, and --

14 MS. MERRILL: Okay.

15 PRESIDING MEMBER KEESE: -- our  
16 consideration of these is appropriate now.

17 MS. MERRILL: Thank you.

18 PRESIDING MEMBER KEESE: Again, as Mr.  
19 Fay said, it may not be next week, but at this  
20 point that's --

21 MS. MERRILL: Okay, well --

22 PRESIDING MEMBER KEESE: -- a relevant  
23 discussion.

24 MS. MERRILL: Okay. Also the draft  
25 biological opinion. Is Duke the only agency that

1 has that? Or does the City of Morro Bay and other  
2 people have it?

3 HEARING OFFICER FAY: Help me in the  
4 sequence of things. We have the draft opinion  
5 now?

6 MR. ELLISON: We have a draft opinion  
7 but it's evolving, apparently. I mean I just saw  
8 the letter this morning, myself. It's addressed  
9 to you, Mr. Fay. It's very short. It's probably  
10 sitting, waiting for you when you get back.

11 It basically says that in their  
12 conversations with EPA that they have reached a  
13 conclusion that there is not an impact on the  
14 plover. But it's not their official finding, it's  
15 just a letter. And their biological opinion is  
16 to be forthcoming. I'm not sure of the schedule;  
17 I believe it's this summer.

18 HEARING OFFICER FAY: Will that be the  
19 draft or their final?

20 MR. ELLISON: My understanding is it  
21 will be the final. But, I don't want to speak for  
22 the U.S. Fish and Wildlife Service; I'm not the  
23 right person to do that.

24 COMMISSIONER BOYD: I wouldn't advise  
25 it.

1           MR. ELLISON: The only reason that I  
2       even raised it was on the assumption that you had  
3       already seen this letter since I had just seen it  
4       this morning. And I was frankly going to ask you  
5       what, you know, the Committee's intention was with  
6       respect to it. But since you haven't seen it,  
7       you're not in a position to say that, so.

8           HEARING OFFICER FAY: We're all  
9       speculating here.

10          MS. MERRILL: Really, I know, this is --

11          HEARING OFFICER FAY: But we still have  
12       your comment on the record about your concern --

13          MS. MERRILL: Okay.

14          HEARING OFFICER FAY: -- for the plover  
15       and --

16          MS. MERRILL: Okay, I just have one more  
17       picture.

18          MR. SMITH: Can we get a clarification,  
19       Hearing Officer Fay? Has Duke seen a draft of the  
20       biological opinion?

21          MR. ELLISON: I'm told yes, we have. I  
22       have not, personally.

23          MS. MERRILL: I just want to tell you  
24       that these little chicks would not have -- this  
25       chick and parent, the chick, there were three of

1       them originally, would not have survived without  
2       the help of the fencing.

3               These particular chicks were not in the  
4       area that we're discussing, but the volunteers  
5       found this particular nest on City property. And  
6       thanks to the work of our City representatives,  
7       Andrea Lueker and many other people from our Rec  
8       and Parks Department, they quickly erected a  
9       fence. And this nest did survive of these  
10      delicate little birds.

11             And so I want you to know that erecting  
12      the fence is helping them survive. At least,  
13      hatch. And we are concerned about what happens to  
14      them after that. There's some other problems that  
15      they encounter.

16             But I would like to encourage you to go  
17      ahead and protect them as much as we can this  
18      time, because they are endangered and they are  
19      having a really hard time surviving.

20             HEARING OFFICER FAY: It occurs to me if  
21      you give your name and address to the Public  
22      Adviser maybe she can help you get a copy of that  
23      letter when it comes in --

24             MS. MERRILL: Okay.

25             HEARING OFFICER FAY: -- from the U.S.



1 Fish and Wildlife Service. And then you can see  
2 directly what they're saying.

3 MS. MERRILL: Can I get it from Duke?

4 HEARING OFFICER FAY: You can ask them,  
5 sure.

6 MS. MERRILL: May I have a copy?

7 MR. ELLISON: I'm not even sure I  
8 brought it with me, but if I have a copy, it's one  
9 copy that I have, I'd be happy to take a card from  
10 you and send you a copy. Or perhaps we can get a  
11 copy --

12 MS. MERRILL: Could you -- you can email  
13 me a copy; fax me a copy.

14 MR. ELLISON: We'll get you a copy.

15 MS. MERRILL: Great, thank you.

16 MR. ELLISON: We'll figure out a way.  
17 Are you going to be here this evening?

18 MS. MERRILL: I'm not sure. I can get  
19 you my card, though.

20 MR. ELLISON: That's fine.

21 MS. MERRILL: All right, thank you.

22 HEARING OFFICER FAY: Sure. Thank you  
23 for your comments.

24 MS. MERRILL: Maybe a lot of people  
25 would like to -- maybe you can make a lot of

1 copies, a lot of people, I think, want copies.

2 MR. ELLISON: That's fine, we will  
3 attempt to get some copies made and bring them  
4 this evening.

5 PRESIDING MEMBER KEESE: That's Ms.  
6 Mendonca's job, back there in the red coat. You  
7 need it, she'll get it for you.

8 MS. MERRILL: Thank you for -- all for  
9 coming to Morro Bay.

10 PRESIDING MEMBER KEESE: Thank you.

11 HEARING OFFICER FAY: Thanks for your  
12 comments.

13 Colby Crotzer, did you want to speak  
14 this afternoon or --

15 MR. CROTZER: At your pleasure, this  
16 evening or now.

17 HEARING OFFICER FAY: How about Mr.  
18 Anderson. Do you have a time constraint? Do you  
19 need to speak this afternoon?

20 Mr. Crotzer, do you mind if we go ahead  
21 with Mr. Anderson, since you seem to be able to  
22 take it either way? Mr. Anderson, please come  
23 forward.

24 MR. ANDERSON: Thank you for being here.  
25 I was the one who, in my tenure as Mayor, asked

1       that as many of these meetings be held here in  
2       Morro Bay rather than up in Sacramento where  
3       people couldn't be able to participate as much.  
4       So, I know it's not convenient for you, but thank  
5       you for doing so.

6               I haven't attended this afternoon so my  
7       comments are going to be more of a general nature.  
8       And that is that it's my strong sense still, some  
9       two years after the voters made it clear they  
10      wanted the project, the smaller plant, most of us  
11      realize, I think, that we're going to live with a  
12      plant here.

13             And in spite of what many people testify  
14      as to the drastic degradation of the health of the  
15      estuary I think that most people who look out  
16      there see the otters, the sea lions, the harbor  
17      seals and bird life in abundance; this past year  
18      the bird life has just been phenomenal.

19             The health of the estuary is something  
20      that can be, however, enhanced with this project's  
21      approval. And that is that the environmental  
22      mitigation moneys can stop the sedimentation and  
23      siltation that has probably reduced the volume of  
24      the Bay 40 percent over the last 60 years.

25             The power plant isn't the problem as far

1 as the health of the estuary. The problem arises  
2 from the remodel of the estuary that took place,  
3 or the Bay, some years ago by the Department of  
4 Navy and the Corps of Engineers.

5 The self-scouring that used to take  
6 place doesn't take place now. And left unchecked,  
7 the sedimentation will eventually make this a  
8 meadowland out there instead of an estuary.

9 People who, like myself, have been  
10 around here 40, 50 years and watched the back Bay  
11 change drastically realize how fast it's taking  
12 place. And the approval of this project, and of  
13 course the environmental mitigation that must take  
14 place with the project, that I guess is being left  
15 to Regional Water Quality Control determining the  
16 amount, will truly enhance the estuary.

17 And a smaller plant, I think by most  
18 people in the community, those I'll call the  
19 silent majority who spoke at the polls, would  
20 rather have a smaller plant than the large plant,  
21 as long as we're going to have one for a neighbor  
22 for some years to come. And one that is more  
23 efficient. As long as we're going to use using  
24 fossil fuels, let's use them more efficiently.

25 And as I said, save the estuary. Keep

1 the sedimentation and siltation down to a bare  
2 minimum. Use that money to do projects upstream  
3 that will stop that from occurring. And as a  
4 result we will have a healthy estuary here for  
5 many decades to come.

6 So, thank you for hearing me this  
7 afternoon. Appreciate it.

8 HEARING OFFICER FAY: Thanks for coming  
9 to speak. Mr. Crotzer, would you like now or  
10 later? It's your choice.

11 MR. CROTZER: Thank you, Commissioners,  
12 for coming here, at least the Committee members.  
13 I was misunderstanding. I was hoping to see the  
14 full Commission before us, but I understand just  
15 the Committee will be reporting back.

16 And also the focus of your desire for  
17 comments is on your preliminary decision, and I  
18 will try to focus my comments on that. And I will  
19 make some general comments, too.

20 I must admit that I am stimulated by my  
21 previous colleague on the Morro Bay City Council,  
22 Mayor Anderson. Both of us now out of office, but  
23 still have a love for our community, certainly  
24 have contrasting views on what is in the best  
25 nature of saving our estuary.

1           Some of my comments, particularly to  
2           your preliminary decision, I think, will allude to  
3           my opinion about that. Because basically no  
4           personal aspersions to the Duke executives or  
5           personnel that are present, because the people  
6           filling these roles have changed over the years.  
7           And I've followed this in quite a lot of detail;  
8           perhaps not in the same detail most recently that  
9           you two Commissioners have, because I haven't been  
10          in office now for several months. But I have gone  
11          over the vast majority of every detail that has  
12          been presented into my library, the stack of  
13          materials approaches my hip or above.

14                 The general impression has been that I  
15          watched as each of the organizations locally that  
16          I've been involved with intimately, that is the  
17          NEP, first of the state -- status of our estuary  
18          as a state estuary; and building toward the NEP's  
19          declaring this as a national treasure in the  
20          National Estuary Program.

21                 They, along with the Museum of Natural  
22          History, each of the candidates for public office,  
23          each of them have been influenced, deliberately  
24          influenced by Duke Energy. Mindful that this is a  
25          mega international corporation with a lot of money

1 and a lot of experience in trying to get their  
2 projects forward.

3 They strategically applied their  
4 persuasiveness, and mainly it's in terms of cash  
5 dollars, to coopt people and organizations who  
6 naturally would take exception to the continued  
7 presence of drawing estuary water and the presence  
8 of a power plant in our town.

9 Historically we've relied upon tourist  
10 dollars. And it's my opinion that the unique  
11 quality of our pristine, particularly potentially  
12 pristine environment here could garner huge sums  
13 of money for our tourist industry if it weren't  
14 for the fact that some tourist guides have to warn  
15 tourists about the fact that this an industrial  
16 plant site, as well, and it may be wiser to spend  
17 your recreational dollars elsewhere.

18 Duke has agreed to support the City of  
19 Morro Bay with these debatable minimums, even  
20 though they are not willing to make a commitment  
21 to that today. They said they will address it in  
22 writing, the \$2 million minimum ceiling for  
23 revenues, tax revenues. And yet, from my  
24 perspective, I just see that as another in the  
25 series of campaign contributions to the city

1 council candidates, not myself, but some of my  
2 colleagues. In the vernacular, bribes.

3 So, when you look at the details of your  
4 recommendation the preliminary decision talks  
5 about the existing Morro Bay Power Plant has  
6 operated in the same location for 50 years using  
7 once-through cooling with intake volume  
8 significantly greater than those proposed for the  
9 modernized project.

10 Well, it's all relying on this issue  
11 that you've spoken of to some length this  
12 afternoon about whether it's an average amount for  
13 the month or day or a year. But anyone that looks  
14 at it would understand that a newer plant would  
15 have -- it would be more economically efficient,  
16 which simply means that the amount of fuel burned  
17 allows for the production of more electricity,  
18 thus more bottomline profits for the shareholders  
19 of Duke Energy, which is their charge. That's  
20 what they're supposed to do.

21 So we don't have anything other than an  
22 attempt to use the public's water virtually cost  
23 free to enhance the profitability of this  
24 corporation, which shouldn't be the highest  
25 priority.



1           Your charge, and the charge of other  
2 agencies, particularly the Coastal Commission,  
3 Fish and Game and others, is to now, in this  
4 modern day and age, we're in another century,  
5 actually protect these resources into the future.

6           And I think the virtual adoption of  
7 Duke's recommendation in their project by the  
8 subcommittee here, making recommendations to the  
9 Committee, as a whole, it does avoid that  
10 responsibility. And I would hope that you would,  
11 as I did at the beginning of this whole process,  
12 hope that you would really weigh the evidence in a  
13 fair manner. And some of what I have to say here  
14 points to specifics where that doesn't appear to  
15 be the case.

16           It says that the CCMP, that is the  
17 document that we worked so hard on with the NEP to  
18 create the National Estuary Program, this  
19 comprehensive conservation management plan, it's  
20 quoted here on page 298 of your findings of fact,  
21 number 4, that the CCMP does not identify the  
22 existing power plant as a problem. Not yet.  
23 There was simply no data at the time that we  
24 finalized that document. And if there is a  
25 revision of that, as I trust there will be in the

1 future, it will have to include a list of the  
2 things that the CCMP did list as potential  
3 problems, even though that we didn't have the data  
4 at the time.

5 The list of questions was quite  
6 indicative of what the concerns were of the NEP  
7 program. One is whether the ecological impacts of  
8 the Morro Bay Power Plant. That's the question.  
9 We simply didn't have the data to answer at the  
10 time. But the data has now been supplied with the  
11 research and the collection of data for your  
12 process. Now we know that there is a significant  
13 impact upon the resources of our estuary. And  
14 that will appear in future versions of the CCMP.

15 What are the effects of the power plant  
16 on Bay circulation patterns we wanted to know.  
17 And what are the effects of the Morro Bay Power  
18 Plant on Bay entrainment of larvae. Whether it's  
19 16 percent, Duke's figure; or it ranges up to 33  
20 percent, the statistical data supplied by your  
21 staff, which you ignored in your preliminary  
22 decision here, it is significant.

23 We have an overwhelming desire to  
24 protect our commercial fishing industry here in  
25 town. And yet I don't see the fishermen here

1 making that connection and standing before you to  
2 testify that somehow the nature of our estuary as  
3 a nursery for fish, some of them commercially  
4 valuable fish, is ignored.

5 Statements like the observation that  
6 there are no steelhead in the Bay. Somehow they  
7 find their way up Chorro Creek, yet they're not in  
8 the Bay. It seems to be overlooking the  
9 fundamental fact they must get there somehow, if  
10 they range the seas.

11 What are the effects of the Morro Bay  
12 Power Plant on air, the disposition, the air  
13 circulation patterns. A lot of those things were  
14 simply unanswered questions. To characterize that  
15 as the Morro Bay estuary saying that there's no  
16 impacts of the power plant on our estuary is quite  
17 unfair interpretation of the fact. We're just  
18 looking for the data.

19 So, it's grossly disingenuous for the  
20 Committee to suggest that the primary agency whose  
21 responsibility for overseeing the health of the  
22 estuary, that is the NEP, has had no concern about  
23 the impacts of the plant, especially in light of  
24 the CCMP's clear statements to the contrary, makes  
25 me wonder if you're really looking at the reality,

1 or if you're trying to, you know, interpret it in  
2 a way that makes it appear that it's okay to have  
3 a power plant drawing water from a national  
4 estuary.

5 Without forcing the applicant to do even  
6 the most fundamental, other than saying it's not  
7 cost effective, the fundamental research into  
8 forcing them to draw their water from the ocean  
9 proper -- Bay, as opposed to this estuary.

10 Logic, I mean lay logic, which is all  
11 that I am is a lay person, not a scientist, but to  
12 see that the estuary water is generally warmer  
13 than the ocean proper water I think is self  
14 evident. The efficiency comes from the cold  
15 water, accessibility to cold water, and simply a  
16 longer pipe out into the ocean seems like it would  
17 go a long way to solve the problem.

18 Of course, ignoring the obvious, that  
19 your staff, others, agencies have said that there  
20 is one way you can simply eliminate it and have  
21 the closed-circuit, you know, dry cooling option;  
22 take away all the impacts to the estuary. As  
23 opposed to this concept that by preventing sand  
24 going into the estuary that somehow that that's  
25 going to have a direct impact on larval or these

1       indicative species impact on the general biota in  
2       the Bay.

3               As the water pool gets smaller you would  
4       think that the density would get higher. In fact,  
5       this mitigation may, in fact, create for more  
6       proportional kill in the long run. Because you're  
7       running this power plant virtually 90 percent of  
8       the time, as opposed to some of the estimates  
9       coming from the applicant.

10              HEARING OFFICER FAY: Mr. Crotzer, --

11              MR. CROTZER: Yeah.

12              HEARING OFFICER FAY: -- I haven't  
13       called a time on you, but you've had --

14              MR. CROTZER: Oh, I beg your pardon.

15              HEARING OFFICER FAY: -- more than  
16       double the allotted time, and there is somebody  
17       else who needs to speak this afternoon.

18              MR. CROTZER: Then I'll simply stop at  
19       that, and hope that the Committee, as a whole,  
20       just an observation on process, is that it seems  
21       quite undemocratic that you have a Committee of  
22       five and only two are studying in detail, the  
23       detail that we have studied these documents, and  
24       yet your recommendation probably would be followed  
25       by your fellows.

1           And only two of you have a huge amount  
2           of power here, and I don't think it's too late for  
3           you to use that in the best interests of the  
4           people of California.

5           HEARING OFFICER FAY:   Okay, thank you.  
6           We have an indication that Stan House would like  
7           to address the Committee this afternoon.   The  
8           other people who have submitted blue cards have  
9           indicated that they wouldn't mind coming tonight,  
10          and so I think we prefer to do it that way.

11          Mr. House.

12          MR. HOUSE:   Stan House, Morro Bay  
13          resident.   First of all I'd like to thank you all  
14          for coming to Morro Bay to have this meeting,  
15          because I think it's beneficial for the community.

16          Second of all, I've lived here for over  
17          50 years.   I remember when there wasn't a plant  
18          here, I was just a small child when they brought  
19          it in.   But I do remember bringing the boilers in  
20          on large boards.

21          This town didn't have a high school; we  
22          didn't have the other elementary school; we didn't  
23          have -- we had one park in town.   This plant has  
24          brought a lot of jobs and a lot of good things to  
25          this city.   In fact, we didn't have a city before

1       this plant was here. This city (sic) allowed the  
2       people of this community to get together and form  
3       the city. It was part of the county.

4               I'd also like to make sure that the HEP  
5       money stays in this town and doesn't get spread  
6       out somewhere else. I think that's very  
7       important.

8               And I'd also like to mention that the  
9       City at this present time is petitioning the  
10      federal government to delist the snowy plover  
11      because the listing was done illegally.

12              So, thank you very much.

13              HEARING OFFICER FAY: Okay, thank you.  
14      Is there anybody who submitted a blue card who  
15      really needs to address us at this time, rather  
16      than come back at 7:00?

17              I see no hands.

18              All right, thank you, all. So we will  
19      take a recess until 7:00, and start again.

20              (Whereupon, at 5:02 p.m., the Conference  
21      was adjourned, to reconvene at 7:00  
22      p.m., this same day.)

23                      --o0o--

## 1 EVENING SESSION

2 7:08 p.m.

3 HEARING OFFICER FAY: Good evening.

4 This is the evening session of the Committee  
5 Conference for the Committee designed by the  
6 California Energy Commission to review the Duke  
7 Energy proposal for the Morro Bay Power Plant  
8 Modernization. If you're here for anything else,  
9 you've come to the wrong place.

10 So we'd like to begin right off the bat  
11 taking people's comments. We welcome your  
12 comments. However, what we're really here for is  
13 comments directed at the language of the Presiding  
14 Member's Proposed Decision. So the way you could  
15 help us the most would be to cite the page on  
16 which your comment belongs if you'd like to see a  
17 change in the proposed decision.

18 To my right is Commissioner James Boyd;  
19 and Chairman Keese was with us this afternoon, but  
20 had other work commitments for the Commission and  
21 had to leave. But Commissioner Boyd is the  
22 Assistant Commissioner on this case, and he will  
23 certainly pass along the wisdom that you impart to  
24 us.

25 So, I'd like to get right to it. We'd



1 ask the people to keep their remarks to three  
2 minutes. We will be timing you, so please  
3 understand when we have to call time. And that's  
4 so that your neighbors will also have time to  
5 address the Committee.

6 First person is Nelson Sullivan. Is  
7 Nelson here? Okay, Jack McCurdy.

8 MR. McCURDY: Good evening, members of  
9 the Committee. I'm speaking tonight for myself  
10 and not for CAPE or any other group.

11 In reviewing the PMPD along with the  
12 briefs and the record, I and others have  
13 discovered that we believe there are numerous  
14 instances of omissions of important and relevant  
15 facts, misinterpretations and  
16 mischaracterizations, errors and misleading  
17 assertions.

18 I have referenced these instances by  
19 PMPD page number, which I will submit to you in  
20 writing, which I have here; 14 pages of it.

21 But in my public comment I wanted to  
22 assert that these instances seem to represent a  
23 pattern that points to the PMPD having been  
24 prepared with preordained conclusion in mind.  
25 That being the proposed licensing of the Duke

1 project with conditions that would be acceptable  
2 to the applicant, and therefore would remove what  
3 Duke would consider serious obstacles to its  
4 construction.

5 The conclusion I've reached is deeply  
6 disappointing and troubling. The reason that I  
7 want to focus on this pattern is because it would  
8 be virtually impossible to see the cumulative  
9 effects of these instances unless the PMPD is  
10 reviewed thoroughly, the briefs of the parties are  
11 read, one has some familiarity with the record and  
12 the relevant statutes, and one has some experience  
13 with the evolution of the project over the past  
14 four years.

15 In other words, without this careful  
16 evaluation it's really impossible to see how  
17 selectively the record was used and how that  
18 shaped the PMPD.

19 The reality is that very few people have  
20 followed this case that closely. And certainly  
21 few outside of CAPE have done so. And no one is  
22 likely now to go back and read all of this, no  
23 matter how provocative and convincing my comments  
24 may be.

25 I want to describe this pattern also to

1 dispel the likely assumption among the public that  
2 the recommendations are necessarily the product of  
3 a careful, thorough and inherently fair review of  
4 the record and information in the case. The  
5 instances I refer to don't support that  
6 assumption.

7 I firmly believe that any fair-minded  
8 person could reach the conclusions I have, had  
9 they had the opportunity to follow this case  
10 closely. It would be futile to try to convince  
11 the uninitiated that the PMPD has the faults that  
12 I refer to. But I do hope to convince people that  
13 they need to inform themselves and make their own  
14 judgments, because building a new power plant is  
15 surely going to affect their lives and properties,  
16 their businesses and their community in ways that  
17 only a close reading of the PMPD can begin to  
18 reveal.

19 Here are some examples of the faults of  
20 the PMPD that I have listed, and I'll go as far as  
21 my time will allow.

22 Omissions. On page 301 it says the  
23 project will comply with LORS, laws, ordinances,  
24 regulations and standards. But there is no  
25 mention of Coastal Commission findings with regard

1 to the project's inconsistency with the Coastal  
2 Act. And the project's adverse impacts on the  
3 estuary, which is designated as an environmentally  
4 sensitive habitat area.

5 Misinterpretation and  
6 mischaracterization of the record.

7 HEARING OFFICER FAY: Mr. McCurdy,  
8 that's three minutes. Can you wrap up, or do you  
9 want to --

10 MR. MCCURDY: Well, I just have -- I'll  
11 just submit --

12 HEARING OFFICER FAY: Will you submit  
13 that? Yes. And since we've allowed the parties  
14 to file a supplemental within three weeks, we'll  
15 allow you, as well.

16 MR. MCCURDY: I have already. Thank  
17 you.

18 HEARING OFFICER FAY: Good. The Public  
19 Adviser can help you get that filed, I'm sure.  
20 Okay. Thank you.

21 Mandy Davis.

22 MS. DAVIS: Hello, once again. I've  
23 really been struggling with what I'm going to say  
24 to you gentlemen this evening. There's so much I  
25 want to say. I'm actually struggling with anger,

1 a variety of emotions.

2 But what I would like to do instead of  
3 struggling with anger and harsh words, is I'd like  
4 to read something really beautiful to you to start  
5 off what I wanted to say.

6 It's too bad Mr. Keese is not here,  
7 because I think he most definitely would benefit  
8 from this. This is from a book about wetlands.

9 "Here where earth meets sea an interface of  
10 two worlds occurs, each giving life to the  
11 other, each defining the other. To stand on  
12 the edge of these two worlds is to be  
13 sometimes overwhelmed by the sights, sounds  
14 and smells of earth and water and the sky, as  
15 they coalesce into one enormous feast for the  
16 senses."

17 "Here one glimpses the powers of creation and  
18 receives, if attentive, an inkling of the  
19 mysteries of life. There's a palpable  
20 rhythm, constant yet ever changing, moving in  
21 and out like a heart beating, though so  
22 slowly at times to be almost imperceptible."

23 I am asking you one more time to listen  
24 to that heartbeat. I have read the PMPD, not in  
25 its entirety, but enough to realize that I

1 consider your findings and your recommendations to  
2 be what I would term as a travesty from an  
3 environmental standpoint.

4 Mr. Keese earlier in the evening had  
5 made some excuses. Bottomline is he had said that  
6 you guys have to consider so many different  
7 things. Well, I understand that. You have a very  
8 difficult job. But every single one of the things  
9 that he mentioned happen to have had an economic  
10 base with no mention of the environment.

11 There are environmental impacts, both  
12 terrestrial and aquatic. And I would ask you to  
13 reconsider. I would like to say that I will not  
14 become one of those cynics that does not believe  
15 in the system. So, please, reconsider what you  
16 have looked at. I think that you need to do due  
17 diligence and you need to do it before the next, I  
18 guess, what do you guys do, you write up a new one  
19 and you put it out. And everybody goes, oh, yeah,  
20 well, that's it.

21 So, I'm asking you please to do the  
22 diligence. Mr. Boyd, I know that you have a very  
23 strong background in environmental issues. And,  
24 please, look -- we all have hearts, you know, this  
25 isn't just an issue of logic. And really honestly

1 if it was an issue of logic I would have to say  
2 you guys have really fallen short.

3 I have a visual presentation to make,  
4 and it's a rather unusual, but I wore this shirt  
5 for a very specific reason. We had these done for  
6 the protest that was done a year ago, and those  
7 people and many more do not believe that once-  
8 through cooling should happen in this plant.

9 The very front of it, as I'm sure you  
10 can read, says, and take this literally, not  
11 figuratively. I don't want to get anybody upset.  
12 "Wet cooling sucks."

13 HEARING OFFICER FAY: Thank you.

14 MS. DAVIS: The back of it says  
15 "millions dead is on Duke's head." Keep in mind  
16 that if you continue on with your recommendations  
17 the millions dead will be on your head, also.

18 HEARING OFFICER FAY: Okay, thank you.  
19 Jim Wood.

20 MR. WOOD: Hey, I get two mikes. Jim  
21 Wood. I'm going to keep this real brief. I'm not  
22 going to bore you.

23 Good evening; thank you for coming to  
24 town. I'd like to see this all come to an end.  
25 I'm just going to keep it simple here.

1           The majority of the people in this town  
2       are in favor of the plant. You know that. The  
3       majority of the people who have lived here the  
4       longest are in favor of this plant. I hope you  
5       know that.

6           Once-through cooling, I hope you know  
7       that. We sent a clear message that's what we  
8       want, that's what the voters want here.

9           It's pretty obvious. I got a little  
10      chuckle at the Lt. Governor's letter today, you  
11      know. This is the state that just put out an  
12      unfunded mandate to all the jurisdictions in the  
13      state for housing. Unfunded mandate, you have to  
14      build this many houses.

15          Obviously they're expecting more people  
16      here. If they're expecting more people here,  
17      there's going to be a demand for power. Pretty  
18      simple.

19          We can talk about economics, just, you  
20      know, thank you.

21           HEARING OFFICER FAY: All right.

22           MR. WOOD: I'm in agreement with the  
23      Presiding Member's Decision.

24           HEARING OFFICER FAY: Thank you. Pamela  
25      Heatherington.



1 MS. HEATHERINGTON: Thank you for this  
2 opportunity to speak. My name is Pam  
3 Heatherington; I'm the Executive Director of the  
4 Environmental Center of San Luis Obispo. I'm  
5 CoChair of the Coast Alliance. And I'm also a  
6 Board Member for the Local Chapter of the Surf-  
7 rider Foundation.

8 The oceans belong to all of us. Just as  
9 we need clean air and sustainable soils for our  
10 existence, the ocean plays an instrumental part in  
11 our ability to live on earth.

12 So, what happens when this common asset  
13 becomes a commodity? Who looks out for the common  
14 good? Duke? Their plan does not speak to  
15 protection. If allowed to go forward it will  
16 cause most likely more harm.

17 The Porter-Cologne Act, Coastal Act and  
18 CEQA are designed to protect the common resources.  
19 Within these you have guidelines of processes to  
20 gauge protection of natural resources and  
21 implement them.

22 The Morro Bay Power Plant has used our  
23 common resources, exploited them through  
24 significant loss in entrainment and impingement.  
25 There is an alternative that would render these

1 existing harms insignificant. And that is dry  
2 cooling.

3 It is incumbent upon you to look  
4 cumulatively at the damages caused by the existing  
5 plant. Any plant that destroys larvae when an  
6 alternate is available that would not destroy  
7 larvae is not an alternative that you should be  
8 thinking about.

9 The commodification of natural resources  
10 leaves the resources vulnerable, at best. When  
11 profit is dependent on use of the commons, in this  
12 case the ocean waters, you must pick the  
13 alternative that causes the least harm on the  
14 resources we all hold in common.

15 Your choice is an easy one if you put  
16 our living environment first.

17 Thank you.

18 HEARING OFFICER FAY: Thank you. Melody  
19 DeMeritt.

20 MS. DeMERITT: I'm Melody DeMeritt,  
21 resident of Morro Bay. I've lived here for ten  
22 years, lived in the area for about 36 years.

23 I could speak to several things about  
24 the PMPD because I've been through it with other  
25 members of the Coastal Alliance on Plant

1 Expansion.

2 I know that you have in the air quality  
3 section 56 conditions of certification; 56  
4 conditions of certification, which seems to me an  
5 awful lot of care being made that this new plant,  
6 which we've always said would add more particulate  
7 matter to the air in this area, that there's a lot  
8 of care being taken to make sure that they don't  
9 run it for longer than four hours of startup time  
10 in any cycle, or that the shutting down period  
11 doesn't last any longer than an hour.

12 Fifty-six conditions of certification on  
13 air quality that you have verification there. You  
14 have listed how they will verify those things.

15 Under aquatic habitat there are, I  
16 believe, only six conditions of certification,  
17 none of them with any verification yet because  
18 it's pending discussion with, I suppose, the  
19 applicant. I would hope the Regional Water Board;  
20 I would hope with your own staff.

21 In reading through here and also  
22 watching this afternoon on tv I've been surprised  
23 at how the Commissioners will pretty much ignore  
24 their own staff. You can pretty much, I think, in  
25 a situation like that, gather that the gentleman

1 and lady over here are paid by Duke, and not  
2 totally objective.

3 Coastal Alliance isn't paid by anybody,  
4 but we can be called, we love the habitat, we're  
5 environmentalists or whatever, so they're not  
6 wholly objective.

7 But your own staff has told you that  
8 these are significant impacts. Your own staff has  
9 recommended -- your own staff. Caryn Holmes this  
10 afternoon was arguing valiantly for their  
11 positions. And yet you want to kind of ignore  
12 that and say, no, and how do you prove that. And  
13 you're giving your own staff a hard time.

14 So what I am not understanding, looking  
15 at the PMPD and understanding it's a preliminary  
16 decision, is how you have completely ignored so  
17 many parties who work on behalf of the State of  
18 California, who are seen as objective.

19 The Department of Fish and Game; the  
20 biological people on your staff; the technical  
21 working group, actually, which is not wholly  
22 objective, but it was a compilation of different  
23 groups, and you also cite their findings and kind  
24 of dismiss them.

25 You know, when we began this process the

1 Coastal Alliance on Plant Expansion four and a  
2 half years ago I think it was, we were told that  
3 you can fight all you want about this, but the  
4 California Energy Commission is kind of a rubber  
5 stamp organization. That they haven't denied a  
6 permit to anybody. They don't deny permits. They  
7 just put a lot of conditions on it and they push  
8 them on through.

9 And I understand that the Commission has  
10 been, in recent history, under some pressure to  
11 get more power plants built in California. I  
12 understand the last couple of years that several  
13 of those power plants have been built and come  
14 online, including the Moss Landing plant that Duke  
15 built in record time over there; which, if anybody  
16 here would take a moment to just drive up to Moss  
17 Landing and take a look at what we're about to get  
18 in Morro Bay if you continue with this decision.

19 One thing has hung over my desk at home  
20 as I've worked with CAPE, and that is this  
21 Margaret Meade quote that says, "Never doubt that  
22 a small group of thoughtful committed citizens can  
23 change the world. Indeed, it's the only thing  
24 that ever does."

25 Well, we've worked very hard to bring

1 the information out. Your own staff has worked  
2 very hard. So now I would say that the small  
3 group of committed citizens has got to be you guys  
4 up there.

5 HEARING OFFICER FAY: I'm going to have  
6 to have you close with that remark.

7 MS. DeMERITT: I'd like to, actually.

8 HEARING OFFICER FAY: Thank you. Garry  
9 Johnson.

10 By the way, just for the record, the  
11 Energy Commission has turned down serious  
12 proposals for power plants. And I've written one  
13 of those decisions that turned down a power plant.

14 MR. JOHNSON: Hey, that's good; yeah,  
15 all right. Gives you more credibility that way.

16 Thank you very much for coming to Morro  
17 Bay and having the meetings here instead of  
18 Sacramento. The citizens here appreciate it very  
19 much.

20 I know it's going to be a hard decision  
21 to make with all the issues on the table, but  
22 please take the consideration the resources that  
23 Duke will bring to the community.

24 I feel the resources coming from Duke to  
25 help the Water Control Board to stabilize the back

1 Bay outweighs the entrainment issues, the water  
2 entrainment issues of the larvae and so forth.

3 It is my opinion that the percentage of  
4 the entrainment of the photoplankton is very high.  
5 I'm a volunteer for the estuary program. There's  
6 several of us that meet twice a month at the south  
7 end of the north pier and we take water samples.

8 I do have a scientific background;  
9 retirement, working for the space program under  
10 NASA. So I know how to take data and look at data  
11 and try to keep it real. And so far we find that  
12 the photoplankton is very random. One week, for  
13 an example, we found pseudonitzschia, which is  
14 part of the photoplankton that is very toxic to  
15 clams and so forth; it was very detrimental to  
16 mammals, brain -- mammals.

17 And that's recently when you heard about  
18 sea otters dying out at sea. There's a good  
19 chance that that was the cause of it. Because a  
20 week later we took some more samples and the  
21 pseudonitzschia were gone. So, it comes and goes.  
22 One week we'll find just one species; and two  
23 weeks later we'll find many species. So it's very  
24 irregular.

25 We've been doing this for a year now and

1 we haven't really pinpointed, you know, the whole  
2 picture yet. But so far it is random.

3 It is my opinion that the bigger issue  
4 concerning the Bay is the back Bay, not the front  
5 Bay. It gets dredged twice a year and the  
6 sediment is taken out. But the back Bay we're  
7 finding a lot of E.coli coming from human beings.  
8 And there's other issues, bacteria growing that's  
9 spreading. And I think the Water Control Board  
10 can take this money from Duke and do it, and put  
11 it to good use.

12 We don't know where the E.coli is coming  
13 from, whether it's people living on the boats, or  
14 people that are from the Los Osos sewer system.  
15 And so that's under study. They take three spots  
16 a month and the E.coli is there.

17 I'll finish up by saying I just came  
18 back from Chula Vista, south of San Diego. I  
19 cannot believe the building going on in this  
20 state. Fifty thousand homes, as we speak, are  
21 going in Chula Vista, 3000 square feet. I don't  
22 see low income housing there.

23 Also I never hear any snails or frogs  
24 found south of here. It always seems to be on the  
25 central coast. But I thought that was



1 interesting, when I was down there last week in  
2 Chula Vista, seeing all those homes being built.

3 Thank you.

4 HEARING OFFICER FAY: Thank you, Mr.  
5 Johnson. Bill Powers, did you want to speak  
6 again?

7 MR. POWERS: Every chance I can get.

8 HEARING OFFICER FAY: Okay. If you can  
9 keep it to three minutes then you can speak.

10 MR. POWERS: I didn't mean to be flip.  
11 I'm actually speaking in the capacity of the Chair  
12 of the Border Power Plant Working Group, which is  
13 one of the signatories of the Coalition letter  
14 that was sent in on January 13th. I have worked  
15 as a technical adviser to CAPE, as well, for the  
16 last year and a half. But I wanted to speak as  
17 the Border Power Plant Working Group.

18 First comment is that Duke has  
19 repeatedly stated that the company would not build  
20 this power plant if either the Regional Board or  
21 the Energy Commission determined that dry cooling  
22 is a requirement. And I think that referring to  
23 the PMPD, that the section especially on  
24 alternative cooling relies heavily on the  
25 information provided by Duke Energy, or by Duke

1 Energy's consultants in reaching the conclusions  
2 that it does.

3 It also refers to the analyses done by  
4 the CEC Staff and by CAPE's engineer, who happens  
5 to be me, that the -- there's actually only a  
6 single sentence that covers that as our  
7 information is unconvincing and lacking in  
8 specificity.

9 And I would like to comment that in  
10 light of Duke's statement to the CEC that they  
11 would not build the facility if you require dry  
12 cooling, that it can be interpreted as a direct  
13 challenge to the authority of the CEC. And I  
14 think it is important for the CEC to reconsider  
15 this decision in that light.

16 And the impression has been given that  
17 the USEPA would not consider air cooling as -- it  
18 would reject, it's not a necessary consideration.  
19 I would like to read a paragraph from the Federal  
20 Register which is from the proposed rule for phase  
21 two facilities, which this would be classified as:

22 "Although the EPA has rejected dry cooling  
23 technology as a national minimum requirement,  
24 the EPA does not intend to restrict the use  
25 of dry cooling or dispute that dry cooling

1           may be the appropriate cooling technology for  
2           some facilities. For example, facilities  
3           that are repowering and replacing the entire  
4           infrastructure of the facility may find that  
5           dry cooling is an acceptable technology in  
6           some cases. A state may choose to use its  
7           own authorities to require dry cooling in  
8           areas where the state finds its (fishery)  
9           resources need additional protection above  
10          the levels provided by these technology-based  
11          minimum standards."

12                 EPA is indicating they see the BTA  
13          requirements as minimum national standards, and  
14          that higher standards are appropriate in some  
15          states.

16                 And I think I will, since I have very  
17          little time I will skip --

18                 HEARING OFFICER FAY: You have no time  
19          actually.

20                 (Laughter.)

21                 MR. POWERS: Could I have ten more  
22          seconds?

23                 HEARING OFFICER FAY: Sure.

24                 MR. POWERS: Ten more seconds. In the  
25          final decision at Moss Landing, which is

1 essentially an identical facility to the proposed  
2 Morro Bay facility, the final decision indicates  
3 that dry cooling would add \$30 million to the  
4 capital cost. In this PMPD that increment is \$200  
5 million.

6 And I would like to point out that the  
7 Moapa Plant under construction in Nevada, which is  
8 a dry cooled plant, being one of the hottest  
9 deserts in the United States, being built by Duke,  
10 is, at least based on their calculations, one of  
11 the most cost effective plants in a merchant  
12 market. And that it will be competing in the  
13 California and Nevada markets.

14 Thank you.

15 HEARING OFFICER FAY: Thank you. Joan  
16 Carter.

17 MS. CARTER: My name is Joan Carter. I  
18 have concerns in the PMPD regarding the lack of  
19 response to the Coastal Commission findings. That  
20 the estuary is an environmentally sensitive  
21 habitat area and cannot, under the Coastal Act, be  
22 adversely impacted by industrial development, even  
23 if mitigated.

24 And as staff pointed out, there is a  
25 significant adverse impact on the estuary. The

1 Coastal Act needs to be enforced. My concern is  
2 that you are all accepting Duke's claim, despite  
3 evidence by recognized independent experts to the  
4 contrary, and going for a questionable untested  
5 mitigation plan.

6 Duke came to town about the time that I  
7 did. And they launched PR-101. They gave money,  
8 spread it around town, everywhere expected; to the  
9 museum, to city functions, to businesses and  
10 restaurants, and promised more to all, even to the  
11 National Estuary Program, which oversees the  
12 health of the estuary.

13 And the officials are razzle-dazzled  
14 with promises of vast improvements. Ex-city  
15 officials even take credit for you being here  
16 today.

17 I came up as a girl raised in the deep  
18 south. I learned early about that whole system,  
19 good old boys offering candy to girls. I don't  
20 like to be manipulated and lied to, patronized and  
21 marginalized. And for some reason I still have  
22 hope for honesty, a carefully considered decision  
23 and not a preordained decision.

24 Thank you.

25 HEARING OFFICER FAY: Thank you. Eric

1 Johnson.

2 MR. JOHNSON: My name is Eric Johnson  
3 and I'm a resident of San Luis Obispo County.  
4 Thank you for this opportunity to comment on the  
5 PMPD.

6 I will address the PMPD, page 301,  
7 finding of fact number 26. The power plant uses  
8 less than 10 percent of the water in the estuary  
9 for cooling. Figures for the total volume of the  
10 Bay are still in dispute. A more recent study  
11 shows that the volume of the estuary is actually  
12 smaller than what was previously thought. The  
13 latest Philip Williams and Associates study shows  
14 that the estuary volume is less than what had been  
15 previously assumed, based on an earlier TetraTech  
16 study.

17 Therefore, the proportional amount of  
18 water to be used by the plant will actually be  
19 higher.

20 New power plants are allowed to use only  
21 1 percent of Bay's water. This new power plant  
22 will be using more than ten times that amount.  
23 This will create a huge impact on our estuary.

24 Therefore, I request that the Commission  
25 and/or its staff review the figures available in

1 determining the true project impacts.

2 Thank you.

3 HEARING OFFICER FAY: Thank you, Eric.

4 I hope you'll be talking to Dr. Raimondi about a  
5 PhD program soon.

6 COMMISSIONER BOYD: Thank you, Eric.

7 You've come a long way in the year I've been  
8 coming here listening to you and your family.

9 (Applause.)

10 HEARING OFFICER FAY: We may want to  
11 retain your services on the next project.

12 COMMISSIONER BOYD: I will be retiring  
13 soon.

14 (Laughter.)

15 HEARING OFFICER FAY: Coleen Johnson.

16 MS. JOHNSON: Good evening; my name is  
17 Coleen Johnson. I'm a resident of San Luis Obispo  
18 County. And this evening I will address pages 281  
19 through 283 regarding the Coastal Commission's  
20 findings and recommendations.

21 In this particular case the Coastal  
22 Commission has strongly recommended the use of dry  
23 cooling because it is both feasible, and would  
24 most certainly result in much less of an  
25 environmental impact to the estuary than once-

1 through cooling.

2 As you know, the Warren Alquist Act  
3 mandates that the Energy Commission includes the  
4 Coastal Commission's recommendations in its final  
5 decision. This provision serves as one of the  
6 important checks and balances in our governmental  
7 system.

8 Unfortunately, the PMPD seems to attempt  
9 to disregard the Coastal Commission's  
10 recommendations, and to try sweeping the  
11 recommendations under the table. Some people have  
12 even characterized this version of the PMPD as  
13 basically rubber-stamping the application of Duke.

14 Surprisingly this draft of the PMPD  
15 rejects recommendations not only by the Coastal  
16 Commission, but also many recommendations put  
17 forth by the Energy Commission's very own staff.

18 The citizens of California rely on the  
19 Energy Commission to assure that power plants that  
20 are licensed will be constructed and operated in  
21 such a way as to minimize their environmental  
22 impacts. The Energy Commission must consistently  
23 fulfill this function if it is to be perceived as  
24 an independent body and credible to the citizens  
25 of the state.



1           So to insure that the checks and  
2           balances of our system are in place, and that our  
3           state's Coastal Commission's recommendation for  
4           dry cooling are incorporated in this decision, I  
5           would like to see the PMPD reviewed and revised.

6           While talking with a neighbor the other  
7           day he told me that looking at the history of the  
8           Energy Commission decisions it follows that what  
9           the power company wants, the power company gets.  
10          But if this were true this entire licensing  
11          process would serve no function other than that of  
12          giving the appearance of considering public input,  
13          staff input and other Commissions input, when, in  
14          fact, none was occurring. This, of course, would  
15          not be an appropriate check and balance between  
16          the public and private interests.

17          So, again, I respectfully request that  
18          you carefully review and consider the input given  
19          to you by both your expert staff and our state's  
20          respected California Coastal Commission.

21          Thank you.

22          COMMISSIONER BOYD: Thank you.

23          HEARING OFFICER FAY: Thank you. Martha  
24          Winston.

25          MS. WINSTON: My name is Martha Winston

1 and I'm a fifth generation Californian. I will be  
2 addressing the PMPD, page 1, paragraph 3, which  
3 states: The project is a major modernization of  
4 the existing power plant. Duke proposes to remove  
5 the existing facility and replace it with a new  
6 combined cycle power plant," et cetera.

7 Yesterday, when I told my eight-year-old  
8 son that I was going to Morro Bay to attend a  
9 meeting about a power plant that's going to be  
10 torn down and replaced with a new modern power  
11 plant, I told him I was upset because it kills a  
12 lot of fish and marine life.

13 He asked me, buy why are you upset if  
14 they're going to build a new modern one. It won't  
15 kill fish, will it? Because the power plant is  
16 not being considered a new plant, it doesn't need  
17 to comply with the stricter laws that new plants  
18 must be built under.

19 If it was considered a new plant it  
20 would only be able to use one-hundredth of the  
21 estuary's water for cooling. But because it's  
22 being considered a modernized plant it doesn't  
23 need to abide by those laws. It can use ten times  
24 that much water.

25 Using the word modernized isn't really

1 correct, either, because the plant is not going to  
2 use modern technology. It will still use the old  
3 technology from the last century.

4 My son thought that if it was going to  
5 be a new modern power plant that it wouldn't kill  
6 fish and marine life like the old one does. So if  
7 the power plant is being modernized, what's the  
8 answer to that question. I didn't know what to  
9 say. It's difficult to explain this to my son.

10 And you're here to help with this  
11 problem. It's even obvious to my eight-year-old  
12 son. And how do you plan on explaining this to  
13 your children and your grandchildren.

14 Is the plant going to be new, as  
15 referred to on page 1? Is the plant going to be  
16 modernized and use dry cooling so that fish won't  
17 be killed? And I don't think dry cooling has even  
18 been considered. And today listening to the  
19 comments you looked surprised when they talked  
20 about it. And you had that information for over a  
21 year.

22 Thank you.

23 HEARING OFFICER FAY: Thank you. Carrie  
24 Filler.

25 MS. FILLER: Good evening. Thanks for

1 sort of speeding up. I just came home actually  
2 today after about eight to ten days away,  
3 exploring the California coast north of here. And  
4 I got an email saying this is your last chance to  
5 tell the Commission that you really oppose the use  
6 of any more water in the estuary.

7 I've been following this issue sort of  
8 from the back pages; I -- have a face or a  
9 localization, but I've been reading it. And I was  
10 for this power plant in the beginning. My husband  
11 and I were at the Oktoberfest in Los Osos and were  
12 like, you know, interested. The guy was friendly.  
13 He was showing us the pictures.

14 And about a year later we found out that  
15 a lot of stuff he was saying was a little bit  
16 truths and the pictures weren't quite right, and  
17 it wasn't going to be like the PR that they  
18 started showing. And I was really disheartened by  
19 that.

20 And I'd like to reiterate everything  
21 anybody has said against using water for as  
22 simplistic and as potent as our young gentleman  
23 spoke, if he is so smart and you want to give him  
24 a PhD, maybe he really has it right. If you think  
25 he's so good, his information is so on that maybe

1       it's that simple and your decision is wrong and  
2       you should listen to the staff and the  
3       information's already been given to you.

4               And this is not my most comfortable  
5       position. I don't come out to speak very often.  
6       But I am very impassioned by this. And if this  
7       goes through it might be another reason for I am  
8       considering leaving Morro Bay because it is  
9       degrading around me.

10              And there are very passionate people  
11       here who do many great things and will cite you  
12       pages and pages of why and we'll go through  
13       rigmarole that sometimes it's like what's the use.  
14       And I'm really tired of feeling disempowered when  
15       very smart people really make elegant and planned  
16       arguments, and they just get rubber-stamped or  
17       economics play more important.

18              This is a beautiful place. The  
19       economics of Morro Bay should come from education,  
20       protecting the environment, because in the long  
21       run it'll be much more beneficial to the people  
22       and to the environment and to the future  
23       generations to have an opportunity to learn from  
24       what is here.

25              Because too often when I drive

1 California we always think it's always been this  
2 way. But it's already gone. And I hope not to  
3 lose any more than we already have.

4 Thank you very much.

5 HEARING OFFICER FAY: Thank you. John  
6 Smurda.

7 MR. SMURDA: Good evening. My name is  
8 John Smurda. And I will address the PMPD, page  
9 298, finding in fact number 1, which states: The  
10 existing Morro Bay Plant has operated at the same  
11 location for 50 years using once-through cooling  
12 with intake volumes significantly greater than  
13 those proposed for the modernized project." End  
14 quote.

15 The current plant at Morro Bay is old  
16 and much less efficient than the newer plants in  
17 the state. And because the newer plants in the  
18 state are more efficient, they are used more by  
19 Duke Energy. And the Morro Bay plant is one of  
20 the last ones to be called online when additional  
21 energy is used.

22 In fact, the Morro Bay plant was only  
23 used a very few days in the last nine months. And  
24 in the last year, in the year 2002, it ran only an  
25 average of 258 million gallons per day.

1           If Duke builds a new plant it will be  
2 much more efficient than the existing plant, and  
3 therefore use more. Just because the new plant  
4 will have a lower maximum capacity it does not  
5 necessarily follow that the new plant will have a  
6 lower actual usage.

7           A newer plant would be more economically  
8 efficient, and it would be run more than the  
9 current plant. It would therefore have more of an  
10 impact on the estuary than is now.

11           Thank you very much for hearing me.

12           HEARING OFFICER FAY: Thank you, Mr.  
13 Smurda. Walter French. Is Mr. French here?  
14 Okay. Norman Risch.

15           MR. RISCH: My name is Norman Risch and  
16 I'm a resident of Morro Bay. By the way of  
17 interest my home looks down on the intersection of  
18 highways 1 and 41. My daughter attends Morro Bay  
19 High School.

20           The decisions made by this Commission  
21 must be based on accurate information. Prior  
22 decisions were made on information that contained  
23 errors. In addition, some factors relating to  
24 this decision changed.

25           This and other presentations will

1 address errors, omissions, changes and other  
2 inconsistencies. I will address comments on the  
3 traffic and transportation section. Page 486,  
4 paragraph 1, clarification. The terminology is  
5 confusing and not always defined. I've come to  
6 these conclusions; if they are incorrect, please  
7 advise me.

8 Project site 107 acres owned by Duke.  
9 Project vicinity, the actual City of Morro Bay or  
10 a six-mile radius. Affected area, a six-mile  
11 radius. Socioeconomic region, the Counties of  
12 Kern, Santa Barbara and San Luis Obispo.

13 Page 487, paragraph 3, an error of fact.  
14 Embarcadero Road runs only north and south.  
15 Coleman Drive is perpendicular to the Embarcadero  
16 and runs east and west from the Embarcadero to  
17 Morro Rock.

18 Page 487, paragraph 3, omission. No  
19 level of service is given for this intersection  
20 where 200 to 800 vehicles may be parked in the  
21 satellite parking area adjacent to scenic highway  
22 1 during a period of 12 months.

23 The accompanying map in figure 2 omits  
24 the veterinarian clinic and does not acknowledge  
25 the steep hill it sits on and that surrounds it.



1 In fact, parking is marked on its site.

2 Page 491, paragraph 1, clarification.

3 What is the benefit of using two different years  
4 for level of service, 1994 and '97.

5 Page 492, table 1, faulty reasoning and  
6 omission. The only way that the numbers for Main  
7 Street and Atascadero Road and Morro Bay High  
8 School could be so low is if one averaged the  
9 whole year, including the two months of summer and  
10 all other holidays.

11 The closest intersection to Atascadero  
12 Road on Main Street was omitted, Radcliffe, which  
13 has its own issues.

14 Page 493, table 2 in the last paragraph,  
15 inconsistency and a misleading error.

16 Page 475 states the peak month will have  
17 831 workers which is inconsistent with the  
18 paragraph's figure of 950. In addition, this  
19 table averages out five months of 600 with seven  
20 months of 200 workers to arrive at an average of  
21 300. Averaging such a wide range in this manner  
22 is misleading.

23 The high school is going to block  
24 scheduling, which means that most students exit  
25 their campus at or shortly after 3:00 p.m. This

1 is an hour earlier than has been allotted and  
2 stretches the PM peak period for highways 1 and 41  
3 to two hours, 3:00 to 5:00 p.m.

4 This also affects the middle paragraph  
5 on page 494. Lastly, a dangerous situation is  
6 being created at the southbound offramp onto Main  
7 Street which is only a few feet parallel to the  
8 back entrance.

9 Page 495, paragraph 1, clarification.  
10 What route will the shuttle bus or van be taking  
11 and how frequently. The word site is omitted from  
12 the second complete sentence between the words the  
13 and adjacent.

14 Page 496, paragraph 2, an error. Since  
15 there are six months when the workforce exceeds  
16 400, page 475, the level of service will decrease;  
17 therefore the word could should be eliminated.

18 HEARING OFFICER FAY: Mr. Risch, I'm  
19 afraid your time is up, but I would ask you if you  
20 could provide a copy of that to the Public  
21 Adviser.

22 MR. RISCH: You do have it already, but  
23 you asked specifically for pages and references  
24 and that's what I --

25 HEARING OFFICER FAY: I appreciate that.

1 You've got a lot of specificity there. Can you  
2 give a copy of that to the Public Adviser. She'll  
3 get it docketed.

4 MR. RISCH: If it's the lady who was  
5 collecting the blue cards, she has it now.

6 HEARING OFFICER FAY: Yes, the lady in  
7 the red suit.

8 MR. RISCH: Yeah, she has it.

9 HEARING OFFICER FAY: And she'll --

10 MR. RISCH: She has it.

11 HEARING OFFICER FAY: -- she'll send it  
12 to us. Good. Thank you. And then we can read it  
13 directly. Thanks very much.

14 James Pauly.

15 MR. PAULY: Good evening. I'm a  
16 resident of Morro Bay. I've been here a couple of  
17 years. And I moved in right after, well, I guess  
18 probably half a year after the election that was  
19 held concerning what the citizens wanted as far as  
20 a new plant goes.

21 As I understand it, I think it was  
22 stated earlier by the former mayor, that what the  
23 choice was, if you wanted the present plant or if  
24 you wanted a smaller plant, a new smaller plant.

25 Well, the real choice should have been

1 do you want a plant or no plant. And really it's  
2 just like saying, you know, do you want \$100 or do  
3 you want \$200, or some kind of a choice. It's  
4 just a no-brainer what they had to choose from.

5 I'm against the plant totally. When I  
6 moved here they told me, well, there's going to be  
7 a new smaller plant constructed, and it's going to  
8 be lower and much smaller.

9 Well, after seeing what actually was  
10 designed and going to be put in, it's a bigger  
11 plant than the other one. And sure, the stacks  
12 are a little different, but basically -- well, I'm  
13 interested in the quality of life in Morro Bay.  
14 And I know a lot of the people behind me are, too.

15 I'm retired. I don't own a restaurant  
16 down on the Embarcadero. I don't have a tugboat  
17 down there. I don't have any special interests.  
18 There are a lot of special interests in this town.  
19 I'm not a contractor, I'm not a realtor. All  
20 these have influence. If you follow the money and  
21 the politics you'll find out where people are  
22 coming from. And this becomes pretty obvious  
23 after you watch this a month.

24 So, two areas I'll address because so  
25 much else has been addressed, and that is one,

1 just the impact. The view and I'm interested in  
2 an attractive Morro Bay. And this is not it,  
3 having that plant. We've had it for 50 years. We  
4 don't need another monstrosity for another 50  
5 years.

6 The other is I understand the plant's  
7 been mostly down for the last nine months. Well,  
8 I tell you, it's been great as far as the air  
9 goes. Prior to that I was really having a problem  
10 on certain evenings with the pollution that was in  
11 the air from the plant. And it's really been  
12 great since that plant hasn't been running. And I  
13 haven't heard that being talked about much.

14 But, thank you, and I'll leave there.

15 HEARING OFFICER FAY: Thank you for your  
16 remarks. Tom Hutchings.

17 DR. HUTCHINGS: Good evening. I'll  
18 request your forbearance in not addressing  
19 specifics, as my comments will be a little bit  
20 more general. But what I lack in specifics I'll  
21 surely make up for in brevity.

22 (Laughter.)

23 MR. HUTCHINGS: Well, good evening. I'm  
24 Tom Hutchings. I'm the Green Party candidate for  
25 the 33rd Assembly District. Morro Bay is in this

1 district. I live in San Luis Obispo, but I have  
2 family and I have friends that live here in Morro  
3 Bay.

4 I'm requesting in the most assertive  
5 manner possible that Duke Power abandon this plant  
6 for the continued and anticipated increased  
7 diversion of water from the Morro Bay estuary.

8 You're aware that approximately 387  
9 million gallons per day are used to cool the  
10 plant. And it's anticipated up to 475 million  
11 gallons per day will be drawn from the Bay.

12 Not only would this huge amount kill  
13 larger proportions of fish larvae and eggs, but it  
14 would also dramatically affect the health of the  
15 mud flats.

16 This drawing of water from the Bay would  
17 also coincide with spawning and other life cycle  
18 events, and have increased impacts on the  
19 estuary's fish population.

20 The intentional and unconscionable kill  
21 of one-third or higher of fish larvae and eggs is  
22 absolutely unacceptable to any reasonable person.  
23 Technology today provides for other methods of  
24 plant cooling. I find it very unfortunate that  
25 environmental concerns and the harming of any

1 living being are minimized by corporate profit  
2 especially when there is technology to avoid this.

3 The estuary must not be sacrificed in  
4 order to increase Duke's profit line. I'm not an  
5 expert in hydrology as my doctorate is in  
6 humanities. But from what I've researched it's  
7 apparent that the current method of using water to  
8 cool the plant is endangering the Bay which is  
9 home for a vast variety of local and migratory  
10 fish and birds.

11 And I'd like to refer to specifics  
12 presented by the young Mr. Eric Johnson, who  
13 apparently knows more about hydrology and tidal  
14 prisms than I do. I support dry air cooling  
15 through the use of fans which have been  
16 recommended in the staff report to the California  
17 Energy Commission. And these have been used  
18 before and they are working fine.

19 And I also have a very serious concern  
20 about the great potential for higher pollution due  
21 to the lower stacks. The current stacks allow at  
22 least for plumes to be carried above and over the  
23 community.

24 Now, as a footnote regarding the  
25 additional 26 million people that are going to be

1 flooding into California over the next 40 years, I  
2 would suggest that we begin to encourage building  
3 of public projects using sustainable energy  
4 resources, such as the solar and the wind. And  
5 this is something that the Commission should  
6 certainly be encouraging. We have the technology  
7 and skilled labor to build these projects.

8 Now I probably won't be accepting  
9 contributions from Duke Energy, but I certainly  
10 appreciate at least they're here tonight listening  
11 to me.

12 Thank you very much.

13 HEARING OFFICER FAY: Couldn't hurt to  
14 ask.

15 COMMISSIONER BOYD: Thank you.

16 HEARING OFFICER FAY: Barbara Jo  
17 Osborne.

18 MS. OSBORNE: I have reports for each of  
19 you.

20 (Pause.)

21 HEARING OFFICER FAY: Could you be sure  
22 to give a copy to the Public Adviser, too, if you  
23 have one.

24 MS. OSBORNE: I don't have one, that's  
25 mine.



1 HEARING OFFICER FAY: Oh, we'll give one  
2 to her.

3 MS. OSBORNE: I have an attachment here  
4 which I have to show you, because I only have one  
5 of these.

6 HEARING OFFICER FAY: Okay.

7 MS. OSBORNE: Please bear with me. This  
8 took me all weekend and all day today and it cost  
9 me \$400 of my lost income to do this. So I'm  
10 going to talk as fast as I can.

11 The report that I gave you references  
12 pages in here and what my concerns are. I've  
13 lived here for nine years, and I'm a southern  
14 California native.

15 (Pause.)

16 MS. OSBORNE: Okay, starting now. But  
17 what I noticed in this plan is that the current  
18 plant has 1030 megawatts and the proposal is 1200.  
19 That means we're going to do all of this, and  
20 we've been doing all of this for the past three  
21 years or however long, for 170 megawatts. That's  
22 like a lot. I mean we're doing a lot for not much  
23 gain.

24 So there's money involved, and I'm a  
25 financial manager and I love money and I love

1 helping people become way more profitable. So,  
2 this is my territory.

3 This is money, and money is a good  
4 thing, but I think it's more profits for Duke.  
5 And that's probably not a bad thing. But the one  
6 thing that I don't see, and I'm going to just  
7 cover the main topics for me -- the one thing that  
8 I'm really worried about that I haven't seen  
9 addressed here is the businesses in Morro Bay.  
10 And I have small businesses.

11 There's a proposal that construction is  
12 going to take five years all together. And it's  
13 five years of noise, dust, dirt, pollution and  
14 traffic. And I'm sure there's not going to be any  
15 delays; I'm sure it's going to be right on time.

16 Morro Bay, our industry is tourism;  
17 that's what we do here, we're tourists and we want  
18 tourists. They give us money, we take it, we  
19 spend it. We like it.

20 However, they come here for peace and  
21 quiet and they will leave for peace and quiet.  
22 They come here to get away from the noise, the  
23 pollution -- I'm sorry, please -- and there is  
24 going to be construction workers coming. And  
25 supposedly that will be a good thing.

1           Well, I don't think the construction  
2 workers shop at The Cotton Ball, and they don't  
3 buy kites at California Images, and they don't buy  
4 plants at the Garden Gallery, and they don't buy  
5 marbles at Poppy's. And they're not going to see  
6 a chicks flick at the Bay Theater.

7           The City bed tax right now from tourists  
8 is \$2.23 million a year. Sales tax \$1.367 million  
9 a year. And that's just the tax, that's not what  
10 they're spending. So since I like math, and I  
11 hope I didn't make a math error, this sales tax at  
12 1.367 means that people spent \$143,894,736.84 to  
13 get to that. And they spent that in all the  
14 stores here, everywhere. People absorbed that  
15 money and that's just on the taxable part of it.

16           They probably bought an orange or an  
17 apple that wasn't taxable -- I'm almost done.  
18 This is not insignificant and it hasn't really  
19 been addressed. What that will do to have the  
20 town shut down basically to tourists for five  
21 years, especially since our lovely neighbors Los  
22 Osos and Cayucos are going, please come see us.

23           There's only 9000 people who live here,  
24 so we're not spending all of that money.

25           HEARING OFFICER FAY: I'm afraid I'm

1 going to have to ask you to close, but we have  
2 your letter and --

3 MS. OSBORNE: The people out there  
4 don't. Just let me --

5 HEARING OFFICER FAY: Your --

6 MS. OSBORNE: -- I'm almost done. I'm  
7 skipping stuff all together.

8 HEARING OFFICER FAY: -- efforts are not  
9 wasted --

10 MS. OSBORNE: Let me just tell you what  
11 219 --

12 HEARING OFFICER FAY: Okay.

13 MS. OSBORNE: -- tons of pollution looks  
14 like, 219 tons a year pollution. It breaks down  
15 to 8423 pounds a week, and how much is that? I  
16 know. An SUV has a curb weight of -- Mercedes SUV  
17 has a curb weight of 4800 pounds. So that's as if  
18 we're taking one and three quarter Mercedes SUVs  
19 every week, chopping them all up, tiny, tiny, tiny  
20 particles and spewing them into the atmosphere and  
21 inhaling them.

22 (Laughter.)

23 HEARING OFFICER FAY: Okay, thank you.

24 MS. OSBORNE: Just one more, one more,  
25 please.

1 HEARING OFFICER FAY: I'm sorry, I'm  
2 going to have to --

3 MS. OSBORNE: Okay, but --

4 HEARING OFFICER FAY: -- cut you off --

5 MS. OSBORNE: -- my last thing is the  
6 food chain.

7 HEARING OFFICER FAY: We have your  
8 letter --

9 MS. OSBORNE: The food chain thing, the  
10 food, these fish that die are food chain. Please,  
11 this is really important.

12 HEARING OFFICER FAY: Okay. I'm just  
13 trying to save time so your neighbors can also  
14 speak to us --

15 MS. OSBORNE: I know, but I hardly ever  
16 get to come here, and it's \$400.

17 HEARING OFFICER FAY: Why don't you post  
18 those either in the lobby or in back, and --

19 MS. OSBORNE: Okay.

20 HEARING OFFICER FAY: -- so people can  
21 see them during the break.

22 MS. OSBORNE: Thank you for listening.  
23 I really appreciate it if you read that yellow --

24 HEARING OFFICER FAY: Thank you for all  
25 your efforts. And we do have your letter.

1 (Applause.)

2 HEARING OFFICER FAY: Now, I'm afraid,  
3 Mr. Nelson, you have a tough act to follow, David  
4 Nelson.

5 (Laughter.)

6 MR. NELSON: Well, I'm going to be David  
7 Nelson and I'll be boring and just address page  
8 321 of the decision here.

9 And, you know, I read a whole lot of  
10 this decision, and when I came to this page it  
11 just totally blew me away. Because here I am, now  
12 most of you know me because I've been here on  
13 every occasion. And here's what I'm quoted as  
14 saying:

15 David Nelson told of personal  
16 observations of abundance of fish life at the  
17 outfall of the existing power plant."

18 Now, come on, you guys. Anybody who  
19 knows me -- Mr. Ellison, do you think I actually  
20 said this? I actually took the video and went  
21 over what I said. And I can see how you could  
22 twist what I said into this, but what I was saying  
23 on this was the lack of abundance in the estuary  
24 and the feeding frenzy of predator fish out for  
25 the cooked fish.

1           Now, that's how you came to this. I  
2       went over and I picked out eight other topics that  
3       I addressed in my three minutes. I hit nine  
4       different topics, and this is what I was quoted as  
5       saying. And I would like this struck from this  
6       record because it's totally twisted.

7           Some of the other things that you might  
8       want to put in is the lack of fish in the estuary,  
9       which was the point of this, you know. And I did  
10      give this to Roberta, so it is part of your  
11      record. And I'm not going to bother reading it  
12      because I'd like to make a couple other points  
13      here.

14          One is you got the wording of the  
15      election that was held in this town. The election  
16      was in November, just one month, less than 30 days  
17      before a 6000-page document was released on this  
18      city.

19          We were told, as citizens of this town,  
20      that the plant, and you heard it said here, that  
21      it was going to be smaller. Well, along with  
22      that, it was going to be cleaner and quieter.  
23      Well, cleaner and quieter is dropped by the side  
24      of the road now that all the testimony is in.

25          We know that we're going to get more

1 pollution from this here in Morro Bay. That's why  
2 that's fallen away.

3 And as far as smaller goes, if somebody  
4 can explain to me how a less-than-ten-acre plant  
5 is going to move to a 16-acre site and be smaller,  
6 just because the stacks are shorter, I'm sorry, I  
7 don't consider that smaller. I just consider that  
8 like my fish story here.

9 And, you know, unfortunately a lot of  
10 the facts are twisted exactly like this. And it  
11 is on video. And I went over the video very  
12 carefully to make sure that I wasn't speaking out  
13 of point.

14 And the other thing I'd like to address  
15 is the cumulative issue that was brought up  
16 earlier by all the parties to this action.  
17 There's no cumulative effect of the old plant  
18 because the Water Board didn't do their job for 30  
19 years. There was no 316Bs done on this estuary so  
20 that we could say to PG&E, gee, this is the  
21 result. And then 10 years, 20 years down the  
22 road, we could actually see what happened.

23 Our agencies didn't do their job. Now  
24 the key part of your decision is laying this  
25 habitat enhancement program to the Water Board.



1 Well, that's the agency that didn't do their job  
2 for 30 years, now I'm expected to believe that  
3 they're going to do the right thing now.

4 Well, I'm here to tell Duke that, you  
5 know, every five years we're going to be here and  
6 we're going to ask the questions. And only six  
7 conditions of construction for biological. I'd  
8 like to see that expanded at least to what air is.

9 I'd like for this Commission to tell  
10 Duke what we expect to see, what results and what  
11 monitoring we want. The Water Board will do this  
12 because we're going to be all over the Water  
13 Board, just like we've been here participating in  
14 this. And you can bet we're going to be for every  
15 five-year license that comes up.

16 And --

17 HEARING OFFICER FAY: Thank you. I'm  
18 sorry I let you go over, but we do want to save  
19 time for your neighbors.

20 John Bafford. John Bafford? Monique  
21 Nelson.

22 MS. NELSON: My name is Monique Nelson  
23 and I'm here as a resident of Morro Bay. And my  
24 comments mainly focus on the PMPD section  
25 regarding the habitat enhancement program.

1           Although many of my views differ from  
2           those in the PMPD, I strongly disagree with its  
3           finding of a 16.2 proportional mortality rate as  
4           noted in fact number 13 on page 347.

5           I urge the Commissioners to reexamine  
6           the record and adopt the finding of a 17 to 33  
7           percent proportional mortality rate as reported by  
8           the CEC Staff, the California Coastal Commission,  
9           CAPE and California Fish and Game, among others.

10          Next, although the habitat enhancement  
11          program to reduce sedimentation effect in the  
12          estuary may be a commendable objective and  
13          project, I do not agree that the record shows a  
14          nexus between the marine mortality caused by the  
15          power plant's once-through cooling system and HEP,  
16          as noted in fact number 14.

17          Dry cooling, on the other hand, would  
18          eliminate the damage caused by once-through  
19          cooling in its entirety. It is the best available  
20          technology.

21          I urge you to adopt dry cooling and the  
22          appropriate mitigation vehicle as supported by  
23          your own staff and the others I just mentioned.

24          Starting on page 339, the PMPD discusses  
25          the finding of the HEP -- the funding of the HEP,

1 and on page 340 states: Neither CAPE nor staff  
2 offered evidence of TMDL funding sources which  
3 would obviate the need for HEP funding such as  
4 offered by Duke. However, Regional Board Staff  
5 Member Michael Thomas was very clear that large  
6 funding sources are not available.

7 On page 341 of the PMPD states: There  
8 is simply no persuasive evidence that the TMDL  
9 program will be funded other than through the  
10 proposed HEP by Duke.

11 I do not agree that Duke is the only  
12 funding source for a TMDL program or HEP. A  
13 number of key land purchases have been made and  
14 are being made by the National Estuary Program  
15 working with other agencies and nonprofit  
16 organizations for habitat and restoration  
17 purposes.

18 These projects, where appropriate,  
19 include taking measures to prevent and improve  
20 sedimentation problems affecting the watershed and  
21 the estuary.

22 As shown by the news articles that I'll  
23 give you, funding sources for these acquisitions  
24 include the Packard Foundation, the Nature  
25 Conservancy, the Trust for Public Lands, the State

1 Coastal Conservancy, U.S. Fish and Wildlife  
2 Service, Wildlife Conservation Board and Caltrans  
3 through a program to pay for environmental  
4 mitigation in connection with road projects.

5 \$1.28 million in federal money has been  
6 made available through an appropriations bill  
7 passed by the House of Representatives.

8 My cursory review shows that close to  
9 \$10 million has been appropriated since the  
10 beginning of this year to purchase either  
11 conservation easements or outright land ownership  
12 for more than 2400 acres. Most of these projects  
13 will directly improve the sedimentation problem in  
14 the estuary.

15 Certainly the Regional Board must be  
16 aware of these acquisitions and I find it highly  
17 suspect that there's no mention of them.

18 Regarding the PMPD's fact number 1, it  
19 states that applicant Duke will provide \$12.5  
20 million to fund an HEP. Assuming the new plant  
21 has a lifetime of 20 years, this breaks down to  
22 about \$625,000 per year; assuming a lifetime of 50  
23 years, which is based on the existing plant, which  
24 would be quite feasible, this breaks down to  
25 \$250,000 per year.

1 I think that in addition to a one-time  
2 payment Duke should provide additional funds on an  
3 ongoing basis. After all, marine mortality will  
4 continue indefinitely.

5 At a minimum a periodic review schedule  
6 should be set up to study the question of whether  
7 additional mitigation is called for.

8 HEARING OFFICER FAY: Thank you.

9 MS. NELSON: Okay.

10 HEARING OFFICER FAY: I'm sorry, I have  
11 to call time.

12 Grant Crawl.

13 MR. CROWL: Hello, I'm Grant Crawl. And  
14 I'm a resident of Morro Bay, but I'm also a  
15 resident of the universe. And we are all  
16 residents of the universe, and we need to take  
17 that seriously. Because what happens here affects  
18 the world.

19 I'm a visual artist and I'm going to be  
20 speaking about the impacts. There are errors of  
21 facts on page 508, 509, 510, 512 and 531. There  
22 are errors of consistency on page 510 and 529.  
23 There are errors of omission on page 521, 522 and  
24 527. And there are errors of grammar on page 520.

25 I stopped believing in Santa Claus a

1 long time ago, and Duke came to this town like  
2 Santa Claus promising everybody everything. I  
3 don't happen to believe a word Duke ever says or  
4 ever has said because if I remember right, they're  
5 part of the brotherhood in Texas that robbed  
6 California out of billions of dollars in trumped  
7 up energy situation.

8 I'll start reading some of the things I  
9 was talking about. Page 21, last paragraph.  
10 Unlike the City government, City residents have  
11 expressed a desire for higher stacks in exchange  
12 for lower ground level emission. Higher stacks  
13 would be better.

14 The other thing, we have a brand new,  
15 remodeled museum here in Morro Bay. And I went  
16 through it not too long ago, and I was pretty  
17 stoked because they have this little game you play  
18 and how much are you polluting the oceans. It was  
19 pretty cool, because I came out not polluting the  
20 ocean hardly at all. So I challenge you all to  
21 not pollute the oceans, not pollute the world, and  
22 make this a better place for all of us.

23 Page 121, last paragraph. Blocking  
24 important views of the water will already be  
25 occurring by the exposed transformers, fans,

1 pipes, catwalks, lights, et cetera.

2 Page 523, last paragraph. By not  
3 requiring partial or full screening, the Committee  
4 is valuing a visual resource, which can be  
5 modified as more important than health and  
6 welfare, i.e., air and noise. This goes against  
7 the full duty of every government agency.

8 Page 528, visual 3. Will temporary  
9 lighting be shielded since permanent lighting will  
10 not be installed until the end of the  
11 construction?

12 Page 529, visual 4. Why are only the  
13 Embarcadero key observation points, KOPs, being  
14 screened from the demolition rubble and not the  
15 residents?

16 Page 529, visual 5. Was not a bridge  
17 design already selected at a public workshop?

18 I have all of these in print for you,  
19 every omission, every grammar error --

20 HEARING OFFICER FAY: Can I ask you to  
21 provide those to Ms. Mendonca, give --

22 MR. CROWL: Gladly.

23 HEARING OFFICER FAY: -- her a copy and  
24 she will docket it.

25 MR. CROWL: Yes.

1 HEARING OFFICER FAY: That way we'll  
2 have it for reference.

3 MR. CROWL: Okay. So, again, I ask you  
4 to be good citizens of the universe, not just this  
5 little issue here.

6 Thank you.

7 HEARING OFFICER FAY: Thank you. Bill  
8 Woodson.

9 MR. WOODSON: Good evening, Commission.  
10 My name's Bill Woodson; I'm a resident of Morro  
11 Bay. And I endorse your tentative decision on  
12 this 110 percent.

13 My background is a power plant engineer.  
14 I was involved in the management of putting  
15 Intermountain Power Plant into Delta, Utah in the  
16 '60s, '60s and '70s. We had a little tougher job  
17 than you guys. We had to put in a coal-fired  
18 plant dry cooling. And we had to address  
19 particulate matter, sulfur and the other issues of  
20 acquiring water.

21 I know that a utility can come in and do  
22 a good job and keep those people happy that are  
23 going to have to live with that plant. As a  
24 matter of fact, with IPP we designed that plant  
25 for four units; we installed two 800s. They liked



1       it so much they've been after the Department of  
2       Water and Power of Los Angeles since then to come  
3       back in and put in the remaining planned two 800s  
4       that it would have capacity for.

5               So it can be done right. When I came to  
6       Morro Bay I was here about the same time Duke came  
7       in. And so I knew what to look for as far as Duke  
8       being a reputable dealer; as far as dealing with  
9       the City individuals. They answered all of my  
10      questions well, articulate, straightforward.  
11      They're a reputable company. And I think that  
12      everything that I have learned of Duke has been up  
13      above board and reputable, and they stand by their  
14      word. And they're technically competent, too,  
15      obviously.

16             I read your summary on your page. I saw  
17      this thing; I bought it and tried to go through  
18      it. I appreciate you guys coming down here,  
19      unlike the Coastal Commission that met in Long  
20      Beach on Morro Bay issues not too long ago. And I  
21      appreciate you here.

22             I understand that I'm running out of  
23      time, but I do want to mention one other thing  
24      that is very important, I think. Is that just  
25      Friday, in the local Telegraph Tribune, which I'll

1 give this to the lady in red, they're talking  
2 about the California Power Authority, which, you  
3 know, the ISO and those guys.

4 They're planning on putting in peakers  
5 in Paso Robles which is 30 miles east, peakers,  
6 the state. And here we have a power plant here  
7 with 230 kV between here and Paso Robles, is  
8 essentially the same node. And they say that they  
9 have to put in peakers because the area is  
10 reliability challenged, or having insufficient  
11 electricity generation or transmission problems.  
12 Can you believe that?

13 So, this even emphasizes the need for  
14 this plant and this modernized plant so that we  
15 can maybe even mitigate these issues. And I think  
16 it's very important, maybe you should at least  
17 look at some of the issues the ISO was concerned  
18 about.

19 HEARING OFFICER FAY: And we have. And  
20 I have to cut you off, I'm sorry.

21 MR. WOODSON: Okay.

22 HEARING OFFICER FAY: Pete Wagner.

23 DR. WAGNER: Hello, again. I'm Peter  
24 Wagner, a Morro Bay resident. I'm speaking  
25 tonight on behalf of 2000 Sierra Club members in

1 San Luis Obispo County.

2 You have our written submission with  
3 citations, so what I thought I'd do is just review  
4 a couple of key points in it, and you tell me when  
5 my three minutes are up.

6 We appreciate the applicant's voluntary  
7 offer to limit annually averaged cooling water  
8 consumption to 370 million gallons a day, 17  
9 million gallons a day less than the five-year  
10 historic average for the existing plant of 387 mgd  
11 that you utilized.

12 It does not follow, however, that the  
13 new plant will actually use less water. The  
14 essential question is how much water the existing  
15 plant would use if it were not replaced, and how  
16 much the new plant is expected to use under  
17 reasonable assumptions.

18 The answer, as you heard this afternoon,  
19 depends greatly on the future operating schedule  
20 expected for both cases. And you simply can't say  
21 it with great precision.

22 Ascribing a significant difference  
23 between a past average of 387 mgd and 370 mgd,  
24 about 4 percent, is simply pushing the numbers  
25 beyond what they can sensibly predict.

1           There's an unresolved difference between  
2       staff and the Presiding Members on how to compare  
3       water use for the two plants. It reflects the  
4       inability of annually averaged daily water use to  
5       be an adequate surrogate for larval mortality.  
6       And you heard an awful lot about that this  
7       afternoon.

8           Moving right along, applicant's argument  
9       on page 263 that diverse species continue to exist  
10      after 50 years of plant operations is specious.  
11      By definition, the only species left are the ones  
12      that have survived 50 years of cropping.

13           No one has any idea what the species  
14      distribution and abundance were before the plant  
15      began selectively cropping through its operations,  
16      because there's no historical record. But I'll  
17      bet you any biologist or marine ecologist will  
18      tell you it's a sure bet both diversity and  
19      abundance were higher. All cropping is selective.

20           On a different issue, three widely  
21      different values have now been given for subtidal  
22      volume and tidal prism volume. Three. The most  
23      recent one was the Army Corps of Engineers  
24      estimate. The three are, as yet, unreconciled.  
25      And they're absolutely essential in the model that

1 predicts proportional mortality. This has to be  
2 straightened out.

3 We are dismayed at the preemptory  
4 dismissal of comments by the California Coastal  
5 Commission. We also deplore the Presiding  
6 Member's practice of overruling and contradicting  
7 its own staff on issue after issue. Staff is a  
8 competent, well informed and completely objective  
9 body. It's --

10 HEARING OFFICER FAY: I'm sorry, --

11 DR. WAGNER: Okay.

12 HEARING OFFICER FAY: -- Dr. Wagner,  
13 your time is up.

14 DR. WAGNER: All right, well, I think  
15 that covers it. Thank you.

16 HEARING OFFICER FAY: Okay. Well, Tom  
17 Laurie is the next speaker, and while he's coming  
18 up I'll just mention for everybody, and this is  
19 not to argue with Dr. Wagner or any of the other  
20 previous speakers, but keep in mind that the staff  
21 of the Energy Commission is a separate party, just  
22 like Duke Energy and CAPE is a separate party  
23 before the Commission. So, it's not unheard of  
24 that the Commissioners disagree with the staff.

25 MR. LAURIE: Good evening; I'm Tom

1 Laurie speaking as a citizen of Morro Bay. I had  
2 a comment on the -- first I want to say that I  
3 understand and appreciate the effort that you, as  
4 a Committee, have made to attempt to establish a  
5 CEQA test for this project, because I don't  
6 believe Duke has made it easy for you by proposing  
7 the 370 cap, which is very close to the 387  
8 historical cap for the old plant.

9 That's why I believe it's extremely  
10 important for you to use a metric to analyze  
11 impacts, rather than cooling water. And we  
12 offered that today in the CAPE panel. And it's  
13 not a new gimmick, it's just a method that you can  
14 use to plug reasonable cooling water scenarios  
15 into the impact model that produce the entrainment  
16 impacts for the year 2000.

17 And the year 2000 is the only  
18 entrainment, or plankton sampling database that's  
19 available for Morro Bay.

20 In 1983 when the plant was certified by  
21 the Water Board for BTA, the entrainment study was  
22 done at Moss Landing. And in 1983 the impingement  
23 study done in Morro Bay was done for Diablo  
24 Canyon. So, the only study that's been done  
25 specifically for Morro Bay was done in the year

1       2000. There hasn't been one previous, and there  
2       probably isn't going to be one for a long time.

3               So, if you plug different numbers into  
4       that study you can get a reasonable and a  
5       scientifically and legally defensible calculation  
6       of mortalities to compare.

7               Thank you.

8               HEARING OFFICER FAY: Thank you, Mr.  
9       Laurie. Richard Smith.

10              MR. SMITH: Yeah, as you fellows know,  
11       I've lived on a boat in Morro Bay for 22 years.  
12       And as a behavioral ecologist I think I've been a  
13       pretty keen observer of it.

14              I got involved in this -- I'll give you  
15       a little tirade first -- I got involved in this  
16       process in 1999. At the time I was really  
17       skeptical about the system. I participated in  
18       other actions with governmental agencies that put  
19       on a show of legal and moral responsibility, and  
20       then select data to support the foregone  
21       conclusions.

22              But in this case I was delighted as  
23       agency after agency carefully monitored the record  
24       and their own data to make informed  
25       recommendations. This included U.S. Fish and

1 Wildlife Service, California Fish and Game,  
2 National Marine Fisheries Service, National  
3 Estuary Program, California Coastal Commission and  
4 the staff of the CEC.

5 All agreed that wet cooling was highly  
6 destructive and that dry cooling was the preferred  
7 alternative. In fact, I might add that the only  
8 agency that supported wet cooling, or the project  
9 as proposed, were those that gained directly  
10 financially, the Air Pollution Control District,  
11 Regional Water Quality Control Board, and the City  
12 Council of Morro Bay.

13 By the way, the citizens did not vote  
14 for this; they voted for a plant as long as there  
15 was no environmental impact. It's pretty clear to  
16 me there is.

17 I'd like to say a couple words about the  
18 disproportionate cost issue. Nowhere have I seen  
19 an analysis of the real cost of environmental  
20 damage against the cost of wet cooling. Consider  
21 this: There's documentation in your record that  
22 70 percent of commercial fisheries are dependent  
23 upon healthy estuaries. Over 80 percent of  
24 California estuaries have been lost as a result of  
25 development. Of those few remaining, most are



1       unhealthy.

2               Healthy estuaries are responsible for  
3       ocean health; they are truly power plants of life.  
4       Ultimately all life on earth depends upon healthy  
5       oceans.

6               How costly is it to continue the  
7       destruction of the few remaining estuaries? How  
8       much should a private industry pay to avoid such  
9       destruction? I pray that you have the courage to  
10      really address this and make a wise decision.  
11      This is crazy what we're doing.

12              I want to talk about CEQA.  
13      Environmental damage will increase over existing  
14      baselines. It's got to. We've heard that the Bay  
15      is shrinking; that means that a constant amount of  
16      water taken from a shrinking bay will result in an  
17      exponentially increasing mortality.

18              If you take a teaspoonful of water from  
19      a bucket, you'll have a much smaller impact than  
20      if you take a teaspoon of water from a shot glass.

21              Finally, I'm going to say, I want to  
22      talk about this business of how good the Bay  
23      looks. Mr. Anderson, the Mayor, said that today.  
24      It's true that over the past nine months we've  
25      seen some remarkable recovery in the Bay. This is

1 most obvious during the feeding frenzies  
2 associated with bait balls of smelt and anchovies.

3 Last year these bait balls continued  
4 longer than any of us can remember. What I think  
5 is really interesting is this is the same year  
6 that we've had a virtual shutdown in plant  
7 operations. It started shortly after the plant  
8 shut down, and continued for a very long time. So  
9 all this business about the pelicans and the seal  
10 lions and everything else, they're celebrating the  
11 fact that those anchovies and smelt stayed in the  
12 Bay. They didn't disappear.

13 Since you haven't stopped me, I wanted  
14 to --

15 (Laughter.)

16 HEARING OFFICER FAY: I have to stop you  
17 now. I'm getting the signal from James.

18 MR. SMITH: All right. Can I submit  
19 these to Roberta?

20 HEARING OFFICER FAY: Sure.

21 MR. SMITH: I hadn't done so before and  
22 I'll add the others --

23 HEARING OFFICER FAY: Yeah, please do.  
24 Anybody out there, you're welcome to submit your  
25 written remarks, and we will read them.

1 John Barta.

2 MR. BARTA: Good evening, Commissioner  
3 Boyd, Commission representatives, Hearing Officer  
4 Fay. My name is John Barta; I'm speaking as a  
5 private resident who lives very close by here.

6 One of the lessons that I -- I'm  
7 speaking in general terms, I apologize. But one  
8 of the lessons that I've learned; a long time ago  
9 I went to Cal-Berkeley at a very critical time.  
10 And we all wanted perfection. We wanted  
11 perfection now, preferably tonight, if not  
12 tomorrow morning.

13 But one of the things that I've learned  
14 in the 35 years since then is that perfection is  
15 really just an aiming point out there in the  
16 future. And what we have to do is do the best we  
17 can here and now in the reality, as we find it.

18 After reading the PMPD I want to thank  
19 you for the good hard work you've done. You've  
20 done some good hard analysis. And you deserve to  
21 be thanked for that by the community, because we  
22 are going to end up with something much better  
23 than what we have right now. We're going to end  
24 up with a better community; we're going to end up  
25 with a healthier Bay in the long run.

1           And in the long run we've already  
2   planted the seeds to get rid of the plant, too.  
3   That's lost in a lot of this rhetoric out here.  
4   But that's planted inside this agreement, that  
5   that plant will go away one day.

6           So we are working towards a better  
7   future. You've done a great job. You need to be  
8   thanked for that. And hold the course on the  
9   PMPD. Thank you.

10           HEARING OFFICER FAY: Thank you. Kim  
11   Kimball.

12           MS. KIMBALL: Good evening, gentlemen.  
13   I'm here basically -- my name is Kim Kimball and  
14   I'm the Executive Director of the Chamber of  
15   Commerce. And I'm here to remind you that the  
16   Chamber of Commerce of Morro Bay has endorsed this  
17   project.

18           I'm here to endorse your tentative  
19   decision on this project, and to remind you that  
20   the citizens of this community overwhelmingly  
21   voted at the polls to have this project as the MOU  
22   and the City of Morro Bay and Duke Energy has  
23   proposed.

24           So, thank you for coming down here. We  
25   really appreciate that. We appreciate the

1 opportunity to be able to speak to you directly.

2 And I'm not going to take up my three minutes, but

3 you're welcome to take a minute to take a deep

4 breath for all the good work that you have done.

5 And you take a lot of hits up here, and for that,

6 I apologize on behalf of my friends out in the

7 audience.

8 But there's a lot of passion in this  
9 community, and a lot of volunteerism. And a lot  
10 of people have worked very hard on both sides of  
11 the issue. And it was very clear that you have  
12 worked very hard on this issue, too.

13 So, again, thank you very much.

14 HEARING OFFICER FAY: Thank you for your  
15 comments. Betty Winholtz.

16 MS. WINHOLTZ: Good evening. My name's  
17 Betty Winholtz; I'm a resident of Morro Bay. And  
18 I'm speaking for myself this evening. I spoke to  
19 you before on the issue of noise, and that's what  
20 I will be addressing again tonight.

21 But before I do I want to make one  
22 comment concerning the land use section. On page  
23 487, number 8, though our general plan does allow  
24 for a power plant within the City limits, it has  
25 not been a goal of this town to use beachfront

1 property for industrial uses. Therefore, I  
2 respectfully ask that you remove the words, goal,  
3 from this finding.

4 On to noise. I'm just going to  
5 highlight, I have four pages of documentation, and  
6 I'll just highlight some of them.

7 On page 488 it says that the City does  
8 not have or regulate permissible hours of  
9 construction. And I beg to differ that it does.  
10 And I'll cite for you in the general plan, page  
11 6--13, and in the zoning ordinance 17.52.30(a) and  
12 (b). And in the municipal code, 9.28.030.

13 Also as noted in our land use plan, two  
14 other measures are possible for mitigation if they  
15 become necessary. And they're not mentioned in  
16 your PMPD, so I'd like to just mention them out  
17 loud.

18 One would be the rerouting of the trucks  
19 away from the high school and using the back  
20 entrance only. And doing maybe some acoustical  
21 treatment at the high school if the noise becomes  
22 too loud or too much for the kids.

23 On page 462, your conditions Noise-1 and  
24 Noise-5, your decision expresses the desire to be  
25 consistent from one type of noticing to the public

1 as to another. But the conditions don't reflect  
2 your desire.

3 So I would ask that any noticing that  
4 goes to residents within a certain radius of the  
5 plant, as designated currently in the PMPD, go to  
6 all residences. Travel occurs among all sections  
7 of our town daily. It's important not to be  
8 shocked or surprised by a sudden noise. And you  
9 know we do have a, on the elderly side, our  
10 population.

11 There is no other effective way to reach  
12 all our people, and I think a post card each time  
13 would be sufficient.

14 It appears under noise condition 4 that  
15 you're allowing an average of 5 decibels above  
16 what's normally expected to be allowed. And it  
17 seems to me that if this is true, and that the  
18 alternative cooling system bumps right up against  
19 that, that there's no reason not to allow that  
20 under a noise condition.

21 I would also ask that on page 468 noise  
22 conditions 6 and 9, that since our elementary  
23 school here in town is no longer being monitored  
24 for the south end of town, that you use sites 7  
25 and 8 to monitor sound down here on the south end.

1           And then just a couple of brief comments  
2   on the socioeconomic section. Throughout that  
3   section you use the term local and affected area  
4   interchangeably, and it's not always clear. But I  
5   think by the end of the section, one realizes that  
6   you mean the same thing. So I'd just encourage  
7   you to use the same terminology all the time.

8           On page 479 you mentioned about the  
9   traffic officer; that we'll be getting one of  
10   those paid for by Duke. Where there are multiple  
11   intersections being impacted during the same hours  
12   I'm wondering how just one officer will be  
13   sufficient.

14           HEARING OFFICER FAY: I'm sorry, Ms.  
15   Winholtz, that's --

16           MS. WINHOLTZ: I'll stop there, thank  
17   you.

18           HEARING OFFICER FAY: Can you share a  
19   copy of that with the Public Adviser; and she'll  
20   be sure to get it docketed.

21           MS. WINHOLTZ: Thank you.

22           HEARING OFFICER FAY: That would help  
23   us, thank you.

24           Janice Peters.

25           VICE MAYOR PETERS: Hello, I'm Janice



1 Peters. I'm currently serving as the Vice Mayor  
2 of the City of Morro Bay.

3 As one of two Council representatives in  
4 the Duke negotiating meetings I spent between 40  
5 and 50 hours over a year with the Duke  
6 representatives. And I want to assure you and  
7 everyone in town that never once was there a  
8 whisper of any improper suggestions, bribes, or  
9 favors, ever. And I would have been the logical  
10 target, had there been.

11 As far as Duke's support of the  
12 community events, et cetera, is that a bribe or is  
13 that simply a corporation trying to be a good  
14 neighbor in the community where it does business,  
15 as corporations everywhere attempt to do?

16 The only personal opinion I'm going to  
17 offer is that for our tourist-destination City the  
18 idea of the noise and size of the dry cooling unit  
19 here would be completely inappropriate.

20 As you can see, our residents are very  
21 passionate about this issue pro and con. I  
22 appreciate your job to balance that passion with  
23 your research and reason.

24 Thank you.

25 HEARING OFFICER FAY: Thank you. Peter

1 Risley.

2 MR. RISLEY: Hello; my name's Peter  
3 Risley; I'm a resident of Morro Bay. And I want  
4 to say that once-through cooling is not  
5 acceptable. You shouldn't do this. You shouldn't  
6 allow this to continue. It was all right in the  
7 '50s, the '40s and '50s. But this is the year  
8 2000.

9 If you allow once-through cooling to  
10 continue for the next 50 years the ecological  
11 damage to our estuary is unacceptable. And so  
12 therefore, some type of dry cooling is necessary,  
13 or no plant at all.

14 And you should really consider this. I  
15 highly recommend that you consider this, because  
16 this is really the issue, is the destruction of  
17 our environment. Very important issue. I don't  
18 think you're listening as well as you should on  
19 this issue.

20 The economic capacity to build dry  
21 cooling that would work is here. The technology  
22 is here. It would be good for our workforce in  
23 this area. It wouldn't be good for the  
24 carpetbaggers from North Carolina. I'm sorry, but  
25 it would be good for Morro Bay.

1 Thank you.

2 HEARING OFFICER FAY: Thank you. Walter  
3 French. Dannie Tope.

4 MS. TOPE: Good evening, my name is  
5 Dannie Tope. I'm a resident, business owner. I'm  
6 currently on the City Promotion Board and the  
7 Chamber Board. Tonight I'm speaking as a citizen.

8 I've been a resident of California my  
9 whole life and I've seen it change, as you all  
10 know, from southern California, and change is  
11 healthy as the therapists say.

12 Speaking as a citizen; I think I have  
13 said that, and my family's been here 40 years.

14 I'd like to thank you this evening for  
15 traveling and having this meeting here in Morro  
16 Bay. I know, because I just traveled for the last  
17 ten days, how hard it is.

18 I'll be very brief. I'm not prepared.  
19 We voted on this plant remodel two years ago. And  
20 you're aware of how the majority feels in the  
21 town. We want the plant; we want the remodel. And  
22 there's been a lot of crummy presidents that we've  
23 voted on, too. It should be the popular vote  
24 rules. You know, we've had a lot of -- that's  
25 what voting's for, correct?

1                   So, thank you.

2                   HEARING OFFICER FAY: Thank you. John  
3 E. Bafford. Mr. Bafford? Eileen Doering?

4                   MS. DOERING: I wasn't prepared to speak  
5 but I wrote a card, but I wasn't --

6                   HEARING OFFICER FAY: Okay. Well, we  
7 have your comments on the card, if that's --

8                   MS. DOERING: That's fine.

9                   HEARING OFFICER FAY: Okay. Ken  
10 Vesterfelt.

11                   MR. VESTERFELT: Good evening. Thank  
12 you for this opportunity to speak to you.  
13 Although I'm going to be very brief, because it's  
14 beginning to be redundant up here, what people  
15 think. And I appreciate and respect what people  
16 are pro and people who may not be for this  
17 project. I truly respect them, because everybody  
18 on both sides has taken an awful lot of time and  
19 effort that hasn't been taken lately for this  
20 project that's here.

21                   It's been overwhelming, I'm sure you've  
22 heard a lot of people. It's an overwhelming  
23 amount of material to research. Although I'm not  
24 speaking as a Planning Commissioner, I am on the  
25 Commission and have had an awful lot of material

1 to read.

2 I've been on websites and have obviously  
3 read everybody's opinion, including letters to the  
4 editor.

5 I am in full support of this project.  
6 And it's not a perfect situation, let's face it.  
7 I don't care who you can talk to, if there was no  
8 plant at all, of course, that would be the perfect  
9 condition. I don't think we can achieve that.

10 I appreciate you being here. And one  
11 more thing is that getting to know some of the  
12 Duke people here, Duke is a good neighbor.  
13 They're not trying to bribe us; we're not idiots.  
14 They're a good neighbor; they're good  
15 businesspeople. If you don't treat your clients  
16 with respect, you're not going to be in business  
17 long, either.

18 Thank you very much.

19 HEARING OFFICER FAY: Thank you. Don  
20 Boatman.

21 MR. BOATMAN: I'm Don Boatman, a citizen  
22 of Morro Bay. My background is the last ten years  
23 startup testing in new power plants. In fact, I  
24 just got back Thursday from four months in  
25 Michigan. Before that I had 30 years in

1 transmission distribution and generation with  
2 PG&E. In fact, I testified in front of you as an  
3 expert witness, transmission lines.

4 I also read the story about the new  
5 peaker plants being built in Paso Robles, Santa  
6 Maria. And the reason those are being built is  
7 because we live in Path 15, as I'm sure you well  
8 know, the most congested area of the grid in  
9 California.

10 And at times it's so congested that a  
11 plant here on the coast can't generate into that  
12 system. The system is not -- you can't always  
13 rely on it in times of peak.

14 So the peakers are there for that case  
15 only. They don't have anything to do with not  
16 enough power here on the central coast. And it's  
17 nothing that a new plant here will change. Until  
18 they improve the -- lessen the congestion on Path  
19 15, those peakers will be needed.

20 In fact, I got into a discussion with  
21 the Duke expert witness at the time I testified  
22 before you, because Duke had been paid a large  
23 amount of money to shut down so Path 15 could be  
24 used to shoot power from north to south.

25 And the Duke spokesman at the time

1 thought that there were two companies that could  
2 shut down, either Duke here in Morro Bay or Diablo  
3 Canyon, the nuclear plant we have just to the  
4 south. But he was not aware that nuclear plants  
5 don't shut down that way.

6 So, my background, I understand the  
7 power flow in California. And the peaker plants  
8 are because of the congestion on Path 15.

9 What we're sitting on with this old  
10 plant right now, as you well know, is a giant  
11 peaker plant. The state is proposing to build  
12 smaller ones, but we already have one right here  
13 being used as a peaker now. The pollution is very  
14 small because it doesn't run too often.

15 About eight months ago I was at a  
16 meeting and Chairman Keese commented that this  
17 would be a difficult decision because of the need  
18 for power in the State of California and the  
19 opposing force of environmental damage caused by a  
20 new plant using cooling water.

21 And I commented to Chairman Keese at the  
22 time that it should not be such a difficult  
23 problem because we need peakers. We have a plant  
24 that merchant people won't build anymore. We have  
25 a giant peaker plant here. It's been bought and

1       paid for many times.

2                   And it satisfies a bunch of people.  It  
3       satisfies the need for load following; for  
4       peakers.  It also will not run too much because  
5       it's only needed during peak power.

6                   Thank you.

7                   HEARING OFFICER FAY:  Thank you for your  
8       observations.  Roger Ewing.

9                   MR. EWING:  Good evening.  Roger Ewing,  
10       Morro Bay citizen.  I came before your first  
11       meeting a few years ago and spoke to an issue, the  
12       height of the smoke stacks.  They are currently at  
13       450 feet, and they're that high because of the  
14       basic reason that whatever comes out goes up very  
15       high and is dissipated by the winds before it  
16       falls upon the citizenry of Morro Bay.

17                   Duke is proposing to lower those stacks  
18       to 145 feet.  Most of us who live on the hillsides  
19       will be breathing through our front doors and  
20       through our windows whatever is coming out of  
21       those smoke stacks.

22                   I question how healthy the stuff coming  
23       out is, but I'm not a scientist.  There are others  
24       who testified with far more experience and  
25       knowledge than I.  But I notice that all the



1 people that have come before you tonight speaking  
2 in favor of the plant have not taken the time to  
3 cite a page or a paragraph or anything from your  
4 report that you issued.

5 So in an effort to keep a level playing  
6 field, I will do the same. I will not cite any  
7 page number.

8 (Laughter.)

9 MR. EWING: I just speak to you in  
10 general. I have been opposed to this plant since  
11 day one when I learned that Duke had bought the  
12 power plant from PG&E. I was shocked, as I  
13 remember Duke from Harlan County, U.S.A., in West  
14 Virginia. And the way Duke has run the process of  
15 getting a permit for this plant has not changed in  
16 their attitude at all from Harlan County, U.S.A.

17 I don't believe them; I don't trust  
18 them. They are here to make money. They are not  
19 here out of concern for our environment. They are  
20 not here out of concern for we, the citizens.  
21 It's all about money. You know that; you've heard  
22 that. And deep in your heart I'm sure you believe  
23 it.

24 Thank you for giving all of us an  
25 opportunity to speak, those who are in favor and

1       those against. Please do the right thing and deny  
2       the permit for this plant. It is the wrong time  
3       and the wrong place.

4               Thank you very much. Good night.

5               HEARING OFFICER FAY: Thank you for your  
6       remarks. Richard Keller.

7               MR. KELLER: Good evening. Richard  
8       Keller, marine engineer, systems engineer. I'm  
9       seeing a lot of butting heads here, very little  
10      give, very little design. It's either all air or  
11      water.

12              I sort of blame Duke for not coming up  
13      with better compromises. You don't want to  
14      operate in a place that doesn't welcome you.

15              Here's a couple alternatives. Sixty  
16      percent air cooling. Start the plant up on air.  
17      Use variable frequency drive on the water side,  
18      just to handle upper loads. It will minimize the  
19      amount of water that you use. It won't piss off  
20      so many of the populace.

21              Another option would be you have the  
22      world's biggest heat sink out there. Don't suck  
23      small bits of water into your plant. Have a  
24      closed loop system with a radiating system out in  
25      the water so that it's a gradual heating and

1       cooling process for your system. You won't affect  
2       the wildlife as much and you won't be -- and  
3       you'll be more welcome in this area.

4               Personally, I voted for the remodel. I  
5       feel that I've been lied to; and I feel that the  
6       change has been misrepresented. And if I had the  
7       opportunity I would change my vote.

8               Thank you.

9               HEARING OFFICER FAY: Thank you. Evan  
10      Buddenhager. Did I pronounce that right? Evan.

11              MR. BUDDENHAGER: Hi; I'm a citizen of  
12      Morro Bay and I appreciate the opportunity to be  
13      heard by you all and by the community.

14              I think there's three main issues that  
15      we're dealing with here, environmental, people and  
16      economic, as you're all aware of.

17              Environmentally I think it's an  
18      extremely dangerous and not well thought out  
19      project. The environment will suffer. I've seen  
20      it on the Bay. I believe it will continue to  
21      suffer if we do once-through cooling.

22              It's, you know, not only affecting the  
23      water, but also through the fallout into the  
24      watershed area from the pollution.

25              Lowering the stacks. My living room is

1       probably 148 feet, and we have strong spring winds  
2       that blow directly around the Rock. I believe  
3       there's rotors that bring the pollution down into  
4       the Bay and into the watershed much moreso than  
5       was discussed in your reports that you read.

6               As far as the people go, I think the  
7       people will be breathing pollution. Natural gas  
8       is natural when it's in the earth. When it's  
9       burned it creates pollution and it's bad for us.

10              We have a fairly large elderly community  
11       here, much of which is downwind of the power  
12       plant. I think it will be adversely affected by  
13       the new proposal with the shorter stacks.

14              And then economically I feel that, you  
15       know, the plant is, you know, will definitely  
16       benefit the community financially. But in the  
17       long term, if there are any glitches in the  
18       environment or the energy-producing industry, or  
19       if there's any break-throughs and this plant  
20       becomes unnecessary, the community won't benefit.  
21       And that's very likely in the future that we'll  
22       get improvements in solar or other types of energy  
23       that the community can use.

24              So I hope you folks reconsider your  
25       decisions, and in the future deny the plant.

1 Thank you.

2 HEARING OFFICER FAY: Thank you. Last  
3 call for Walter French. Still not here. Johnny  
4 Bafford. Okay, that completes all the blue cards.

5 MR. SULLIVAN: Nelson Sullivan. Nelson  
6 Sullivan.

7 HEARING OFFICER FAY: Oh, Nelson's here.  
8 Okay.

9 MR. SULLIVAN: The lady in red promised  
10 me I could speak.

11 (Laughter.)

12 MR. SULLIVAN: On page 267 in your  
13 latest effort you talk about impingement. The  
14 316B study also includes an analysis of  
15 impingement impacts.

16 With the exception of the Energy  
17 Commission Staff, expert witnesses agreed that  
18 impingement impacts from the project are not  
19 significant under CEQA or against the zero  
20 baseline of the Clean Water Act.

21 The Regional Board Staff considers  
22 impingement impact to be relatively minor.  
23 Reports the amount of fish impinged is about 1.4  
24 tons per year, and these are mostly northern  
25 anchovies. About 850 pounds of invertebrates are

1       also impinged annually.

2               I'd like to take exception to that, and  
3       I would cast a doubt of suspicion of the data that  
4       Duke has submitted. Because I personally have  
5       watched the destruction of tons of jellyfish in  
6       the screens; enough jellyfish to stop the plant.  
7       They had to stop the plant, which was being  
8       monitored at that period, also.

9               They had trucks there; they had at least  
10       six workers on the water intake platform there  
11       getting rid of these jellyfish.

12              And the 316 B says it does not mention  
13       any jellyfish being taken at all. Zero jellyfish.  
14       So I don't know what those other fish that they --  
15       invertebrates that they had gotten, but there was  
16       no jellyfish.

17              There's an incident that happened down  
18       in San Diego recently where a Port Commissioner  
19       was dealing with a decision of who was going to  
20       run the plant down there, Duke or a competitor.  
21       What's that mean?

22              HEARING OFFICER FAY: It says one  
23       minute. One minute left.

24              MR. SULLIVAN: Oh. And anyhow, to try  
25       and shorten this up, this commissioner was

1 convicted of a conflict of -- state conflict of  
2 interest. I'm sure you gentlemen know about that.  
3 For working for Duke, \$20,000 a month, with the  
4 agreement that he would do no harm to Duke and he  
5 would do no good for Duke's competitor. And that  
6 is the (inaudible) resource that we're looking to  
7 enjoy for 50 years.

8 Thank you very much.

9 HEARING OFFICER FAY: All right, that  
10 concludes all the speakers. Before I turn it over  
11 to Commissioner Boyd for closing, I want to echo  
12 some comments that were made by past Commissioner  
13 at the close of one of the very highly contested -  
14 - one of many highly contested projects that we've  
15 had in an even smaller community than this.

16 And he just made the plea that we  
17 respect all the different views here, and we  
18 sincerely hope that all of you can respect each  
19 other's differences on this. I believe that  
20 people were speaking from the heart, and we just  
21 certainly hope that this kind of forum isn't a  
22 divisive type of thing to the community.

23 It's a chance for us to hear from  
24 everybody, and I've taken notes, and we'll have a  
25 transcript, so we will pay attention to your

1        comments and try to look over the proposed  
2        decision carefully in light of what you've said.

3                But I hope it doesn't become an excuse  
4        for people to go after each other, because you've  
5        got a great community here. And I want to thank  
6        you for your hospitality over the many many months  
7        we've been coming down. And for the good seafood,  
8        too.

9                Commissioner Boyd.

10               COMMISSIONER BOYD: Thank you. I want  
11       to, and I'm sorry so many people had to leave, but  
12       I want to thank you all for, no matter what your  
13       point of view is, for your participation in this  
14       process.

15               I hate to say this but you don't know  
16       how many of these hearings that I participate in  
17       or conduct where the audience is pretty thin. Not  
18       necessarily power plant hearing cases, which tend  
19       to invigorate local communities, but there's lots  
20       of other very important procedures and  
21       transactions that we deal with that I'm constantly  
22       disappointed in the lack of citizen participation.

23               So I commend you for your participation;  
24       that's probably what draws us down here more often  
25       than not. Although it is a beautiful community.



1 I've even snuck in here with my wife on weekends,  
2 if we have an occasion, of course not telling  
3 anybody I'm here.

4 In any event, I want to echo the  
5 comments about our being open, our wanting to hear  
6 your points of view, our taking into consideration  
7 your varied points of view. And I also want to  
8 build on the statement, because it's one of my  
9 long-held premises, something I learned as a young  
10 idealist out of the University of California --  
11 where is that gentleman? -- that to have an open  
12 mind, to approach everybody who has something to  
13 say with the idea that while I feel I'm right, you  
14 might be right, I will listen to you.

15 And that applies both ways. And I ask  
16 you to dig into what it is we do as we struggle to  
17 do what is collectively right for everybody  
18 involved, which is, of course, a very difficult  
19 thing to do.

20 I guess I'm thin-skinned enough to say  
21 I'm a little hurt by the continued repetition of  
22 the preordained decision. You're entitled to your  
23 privilege. I don't, of course, share that point  
24 of view. I don't feel that the activity of the  
25 Committee in any way, shape or form has been

1       preordained.

2               You may not like the political process,  
3       although I think here in California it's pretty  
4       good compared to other places that I've seen and  
5       observed. And I think we really are sincerely  
6       struggling with what is the best thing to do, and  
7       what is the best balance in the near term that  
8       will give a long-term payoff.

9               And this is a particularly tough issue.  
10       And we will continue to wrestle with it, and take  
11       into consideration all that you've said tonight.

12              I think Mr. Fay has pointed out the  
13       difficulty -- I'm not saying this as an excuse or  
14       seeking your sympathy, but we sit here just barely  
15       short of wearing judicial black robes, unable and  
16       do not at all talk to Duke, talk to any of you  
17       about this subject. Or talk even to the staff of  
18       the Energy Commission, which is an unfortunate  
19       shortcoming, but it is the law on this to try to  
20       guarantee balance.

21              So we deal with what is put on the  
22       record, has been put on the record, lo these many  
23       days, months and perhaps years now, that this  
24       issue has been being debated. And we will  
25       continue to deal with the issue that way. And we

1 will deal with what we heard tonight and try our  
2 best to reflect whatever our ultimate decision is  
3 on what we collectively can conclude, based on the  
4 record, is the right thing to do.

5 And I just hope that some of you can see  
6 ultimately wherever we go that it is the result of  
7 a sincere effort. I can't top the lady who said  
8 she was a fifth generation Californian, I'm only a  
9 fourth generation Californian. And I do care  
10 about the place. And I believe everybody who  
11 works up here does. And we'll do our best.

12 I want to, while I can't talk to the  
13 staff of the Energy Commission about this, I can  
14 thank the staff of the Energy Commission, and Ms.  
15 Myers and Mr. Kennedy back against the wall there  
16 for a) staying here so late tonight with us; and  
17 b) for working, I know, so hard on this issue.  
18 Each of them have other activities to do. And I  
19 know they're burning the candle at both ends back  
20 in Sacramento on the many projects that they work  
21 on. So I thank them, and please convey to the  
22 staff our appreciation. See, I can do this in  
23 public, but I can't do this in private or it would  
24 be an illegal act if I talk about this particular  
25 project.

1                   So, anyway, I thank you all. I am  
2                   impressed with your collegiality and your  
3                   sincerity and your esprit de corps of the  
4                   community in caring about your community. I think  
5                   that's extremely healthy and I commend you for it.

6                   I just hope that the future plays out  
7                   for you as best it possibly can, and meets your  
8                   needs over the long term.

9                   So, again, thank you very much.

10                  HEARING OFFICER FAY: Thank you, all.  
11                  We are adjourned.

12                  (Whereupon, at 9:10 p.m., the conference  
13                  was adjourned.)

14                               --o0o--

## CERTIFICATE OF REPORTER

I, JAMES RAMOS, an Electronic Reporter,  
do hereby certify that I am a disinterested person  
herein; that I recorded the foregoing California  
Energy Commission Committee Conference; that it  
was thereafter transcribed into typewriting.

I further certify that I am not of  
counsel or attorney for any of the parties to said  
conference, nor in any way interested in outcome  
of said conference.

IN WITNESS WHEREOF, I have hereunto set  
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